

# **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, [REDACTED] 1962**

**No. [REDACTED] 6**

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**THEODORE R. GIBSON, PETITIONER,**

**vs.**

**FLORIDA LEGISLATIVE INVESTIGATION  
COMMITTEE.**

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA**

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**PETITION FOR CERTIORARI FILED MARCH 20, 1961  
CERTIORARI GRANTED MAY 8, 1961**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 70

THEODORE R. GIBSON, PETITIONER,

vs.

FLORIDA LEGISLATIVE INVESTIGATION  
COMMITTEE.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA

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**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL  
CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR  
LEON COUNTY**

±16820

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE, Petitioner,

v.

THEODORE R. GIBSON, Respondent.

PETITION—Filed December 29, 1959

Comes now the Florida Legislative Investigation Committee, by and through its undersigned counsel, and files this, its petition, pursuant to Section 3, Subsection (2), Chapter 59-207, Laws of Florida 1959, and respectfully shows unto the Court as follows:

1. That petitioner Committee was duly created under Chapter 59-207, Laws of Florida 1959, and that said Committee was, by said Legislative enactment, authorized to and directed to make certain investigations into certain matters under the terms of said Legislative enactment.

That Subsection (1) of Section 3 of Chapter 59-207 expressly authorizes the Committee to require by subpoena or otherwise the attendance of witnesses and the production of documentary evidence, as well as the giving of oral testimony of witnesses before said Committee.

That pursuant to the authority duly vested in it by Chapter 59-207, the Committee duly set and called a public hearing to commence on November 4th, 1959, at 9:00 o'clock A.M., in Committee Room No. 50, State Capitol Building, Tallahassee, Florida. That on the 27th day of October, 1959, the Committee, through its Chairman and staff, caused a duly issued and executed subpoena of the Committee to be served upon one Theodore R. Gibson, whose address is

3481 Hibiscus, Miami. Said subpoena commanded said witness to appear before said Committee in Committee Room No. 50, State Capitol Building, Tallahassee, Florida, on November 4th, 1959, at 9:00 o'clock A.M.

[fol. 2] That said witness, although physically appearing at the place and time designated in said subpoena, wilfully failed, refused and neglected to answer the lawful and material questions propounded to him by the Committee, without stating any sufficient privilege or basis in law for such repeated refusals to answer the Committee's questions. That a certified true and correct copy of the transcript of the Committee's hearing in Tallahassee, Florida, is filed herewith, marked Exhibit "B" and made a part hereof as fully as though set forth herein in haec verba. That said transcript shows conclusively that said witness wilfully refused to answer the lawful questions propounded to him in open defiance to the Committee and the Legislature of Florida. That said witness's appearance before the Committee is reflected and shown by pages 189 through 198 of said Exhibit "B". A true and correct copy of the subpoena served on said witness, showing its service and the return thereon, is attached hereto, marked Exhibit "A" and made a part hereof as fully as though set forth herein in haec verba. That the mileage and per diem required by law to be tendered to witnesses before a Committee of the Legislature of Florida was duly made to said witness and a check on said Committee in the correct amount was delivered with the service of said subpoena.

That the subpoena served upon the said Theodore R. Gibson required him to produce before the Committee certain records showing membership lists and payment of dues to the N.A.A.C.P. That said witness, while stating that he had the records called for in his possession, wilfully failed, refused and neglected to comply with the lawful demand in said subpoena duces tecum and the lawful directions of the Committee to produce the records called for by said subpoena, without stating any sufficient privilege or basis in law for such refusal.

That Subsection (2) of Section 3 of Chapter 59-207, Laws of Florida 1959, expressly provides that the Committee

may invoke the aid of any Circuit Court in Florida by filing a petition as is here presented, setting up the failure of any witness to respond to the lawful subpoena of the Committee.

[fol. 3] That said section further provides that upon the filing of such petition, the Court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond to the subpoena of the Committee and to all lawful questions put to the witness by the Committee and to produce all documentary evidence in the possession of the witness which is lawfully demanded by the Committee. That the failure of any witness to respond pursuant to the order of the Court shall be deemed a criminal contempt of Court and shall be punished accordingly:

That the Committee did on the 4th day of November, 1959, instruct and direct its undersigned counsel to prepare and file this petition against the said witness. See Pages 80 & 81 of the certified copy of the transcript of the Committee's proceedings marked Exhibit "B" above.

Wherefore, petitioner respectfully prays that the Court do issue a rule nisi to be directed to the said witness and served upon him, requiring said witness to appear before this Honorable Court on a day and time certain, then and there to show cause, if any he can, why this Court should not direct the said witness to appear before the Committee and respond to all lawful questions propounded to him, and to produce the records lawfully demanded of him, and to further show cause why, upon his failure to do so pursuant to the order of this Court, he should not be adjudged in contempt of this Court and punished accordingly.

Mark R. Hawes, Chief Counsel, Florida Legislative Investigation Committee.

*Duly sworn to by Mark R. Hawes, jurat omitted in printing.*

[fol. 4]

EXHIBIT A TO PETITION—SUBPOENA DUCES TECUM  
(omitted in printing)

[fol. 6]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR LEON COUNTY

[Title omitted]

ORDER TO SHOW CAUSE—December 29, 1959

This cause coming on, on the petition of the Legislative Investigation Committee of the State of Florida, and it being made to appear by said petition and the accompanying exhibits filed therewith, that you Theodore R. Gibson, having been duly subpoenaed to appear before said Committee as a witness on November 4th, 1959, at 9:00 o'clock A.M., in Committee Room No. 50, State Capitol Building, Tallahassee, Florida, to appear and testify as a witness before a duly and regularly called hearing of said Committee; and that you, after having appeared at the time and place designated in said subpoena, wilfully failed, refused and neglected to answer lawful and material questions put to you by the Committee, and to produce certain records lawfully demanded of you, without stating any sufficient privilege or claim in law for your refusal to testify and answer said questions; this is, therefore, to command that you, Theodore R. Gibson, do be and appear before the Honorable W. May Walker, one of the Judges of the above styled Court, at 10 o'clock A.M. on the 17th day of February, 1960, then and there to show cause, if any you can, why this Court should not order you to appear before said Committee and to respond to all lawful questions put to you by said Committee, and to produce all records lawfully demanded of you, and why, on your failure to so respond, you should not be adjudged in contempt of this Court and punished accordingly.

[fol. 7] Done and Ordered in Chambers at Tallahassee, County of Leon, State of Florida, this the 29th day of December, 1959.

W. May Walker, Circuit Judge.



Received at 2:59 o'clock p.m. on the 5 day of January, 1960. Served the above and foregoing Order to Show Cause, by reading the same to and handing the same to Theodore R. Gibson.

J. H. Byer, Deputy Sheriff.

[fol. 8] Proof of service (omitted in printing).

[fol. 10]

EXHIBIT "B" TO PETITION

BEFORE THE FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE  
Committee Room No. 50  
STATE CAPITOL BUILDING  
Tallahassee, Florida

**Transcript of Testimony—Wednesday, November 4, 1959**

APPEARANCES:

Representative W. Cliff Herrell, Chairman, presiding;  
Senator H. H. Hair, Member;  
Senator W. Randolph Modges, Member;  
Senator Charley E. Johns, Member;  
Representative William G. O'Neill, Member;  
Mark R. Hawes, Esq., Chief Counsel for the Committee;  
R. J. Strickland, Investigator for the Committee.

[fol. 11]

PROCEEDINGS

(The Committee met at 10 o'clock, a.m.)

COLLOQUY BETWEEN COMMITTEE AND WITNESSES

The Chairman: The meeting of the Florida Legislative Investigation Committee will come to order.

Counsel, will you have a roll call of the witnesses under subpoena?

Mr. Hawes: Call the roll, Mr. Strickland.

Mr. Strickland: Vernell P. Albury.

Vernell P. Albury: Here.

I wish to say that I do not have in my possession, nor am I the custodian of the records that the subpoena commanded.

Mr. Strickland: Theodore R. Gibson.

Theodore R. Gibson: Present.

Mr. Strickland: Reverend Edward T. Graham.

[fol. 14] Reverend Edward T. Graham: Present.

Mr. Strickland: G. E. Graves, Jr.

G. E. Graves, Jr.: G. E. Graves, Jr., is present.

I wish to state that I do not have in my possession or custody any of the records commanded by the subpoena served upon me.

Mr. Strickland: Reverend A. Leon Lowry.

Reverend A. Leon Lowry: Reverend A. Leon Lowry present; and wishes to state that he does not have in his possession any of the records requested by the subpoena.

Mr. Strickland: Ruth Perry.

Ruth Perry: I am present, but I wish to state that although the subpoena commanded me to bring all membership lists, I do not have any in my possession.

Mr. Strickland: Abe Sorkin.

Abe Sorkin: Present.

Mr. Strickland: Fannie Stiller.

Fannie Stiller: Present.

[fol. 15] Mr. Strickland: Richard Stiller.

Richard Stiller: Present.

Mr. Strickland: Arlington Sands. Arlington Sands.

(No response)

The Chairman: Mr. Strickland, will you have the witnesses escorted to the witness room?

Mr. Strickland: All witnesses, that their name has been called, that are present, would you please follow the patrolman there.

(All witnesses present except G. E. Graves, Jr., left the hearing room.)



G. E. Graves, Jr.: My name is G. E. Graves, Jr.

I have been subpoenaed here as a witness, but I also appear as co-counsel for some of the other witnesses. Therefore, I request that I be not excluded under the rule of exclusion which you've just made.

Mr. Hawes: Counsel, you'll be allowed to be in the room [fol. 16] when any witness you represent is before the Committee.

Mr. Graves: Very well, sir.

Mr. Hawes: By the way, counsel, which witnesses do you represent?

Mr. Graves: I represent the Miami Branch of the National Association for the Advancement of Colored People, Vernell Albury, Ruth Perry and Father Theodore R. Gibson.

Mr. Hawes: All right.

Mr. Graves: Now, may I ask, will I be permitted to remain during the entire proceedings?

Mr. Hawes: We'll take that under—

Mr. Graves: Inasmuch as I represent the Miami Branch also.

Mr. Hawes: We'll let you know in a little bit.

Mr. Graves: Oh, all right, sir.

The Chairman: The hearing will stand in informal recess for a few minutes while we wait for the appearance of some of the other witnesses.

(Whereupon, a recess was taken)

The Chairman: It appears that we are going to be de- [fol. 17] layed for quite some time; we don't want to keep the people waiting here until that time.

We'll recess the hearing until 2 o'clock this afternoon.

(Whereupon, at 10:50 o'clock, a.m., the hearing was recessed until 2 o'clock, p.m., of the same day)

[fol. 18]

### Afternoon Session

The Chairman: The hearing will be called to order, and for the purpose of the record, I would like to have the roll called once again.

We have a record of your statements this morning; we just want to make sure that all the witnesses are present.

Mr. Hawes: Would you please answer to your name?

Vernell P. Albury.

Vernell P. Albury: Present.

Mr. Hawes: Theodore Gibson.

Theodore R. Gibson: Present.

Mr. Hawes: Edward T. Graham.

Edward T. Graham: Present.

Mr. Hawes: G. E. Graves, Jr.

G. E. Graves, Jr.: Present.

Mr. Hawes: A. Leon Lowry.

A. Leon Lowry: Present.

Mr. Hawes: Ruth Perry.

Ruth Perry: Present.

Mr. Hawes: Abe Sorkin.

Abe Sorkin: Present.

[fol. 19] Mr. Hawes: Fannie Stiller.

Fannie Stiller: Present.

Mr. Hawes: Richard Stiller.

Richard Stiller: Present.

Mr. Hawes: Arlington Sands.

(No response)

Mr. Hawes: Sands is still not present, Mr. Chairman.

The Chairman: I'd like to read an opening statement for the benefit of the witnesses, before they retire to the witness room, and for the record.

Can everyone in the room hear? If not, please raise your hand.

(No response)

#### OPENING STATEMENT OF CHAIRMAN.

The Chairman: "As Chairman of this Committee, and for the benefit of witnesses subpoenaed, I wish to make an opening statement with regard to these hearings and the questions under inquiry. The purpose of this statement is to aid the various witnesses before the Committee to determine the pertinency of the questions propounded to them to the questions under inquiry. To this end, the several

[fol. 20] witnēsses' careful attention is invited to the following statement, and I am now going to read to the witnesses the Act of the Florida Legislature that created this Committee:

"An Act to provide for the creation and appointment of a committee of the Legislature to make investigations of the activities in this state of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida; for the conduct of hearings and the subpoenaing of witnesses; providing for circuit courts to enforce committee's processes; for a report of such committee to the 1961 Legislature; authorizing the employment of specialized assistance by the committee; providing for the expenses of the committee; providing an effective date; and providing for the extension of the joint committee set up by Chapter 57-125, Laws of Florida, 1957, until the committee created by this Act is duly appointed and organized.

[fol. 21] WHEREAS, the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956, has expired with the filing of its report to the legislature as provided by said act; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, will expire with the filing of its report to the legislature as provided by said act; and

WHEREAS, the said two committees' records and reports disclose a great abuse of the judicial processes of the Courts in Florida, as well as certain activities on the part of various organizations and individuals which constitute violence or the threat thereof, or violations of the laws of this state and which activities are inimical to the well-being of the majority of the citizens of this state; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, was created to complete the work commenced by the joint committee set up by chapter 31498, [fol. 22] Laws of the extraordinary session, 1956; and

WHEREAS, there is in the committee's files and records evidence and sources of evidence disclosing that the Com-

munist Party, its fronts and apparatus and other subversive organizations, are seeking to agitate and engender ill-will between the races of this and other states; and

‘WHEREAS, the joint committee set up by chapter 57-125 has diligently pressed its investigations to determine the exact nature, extent and effect of subversive penetration and influence on the actions of certain organizations and individuals active in Florida; and

‘WHEREAS, said committee has been prevented from ascertaining the same because of the deliberate and almost unanimous action of the witnesses before it in resorting to litigation to frustrate said committee’s investigations, which resulted in said committee being mired down in numerous law suits in the Circuit Court and the Supreme [fol. 23] Court of Florida, all of which litigation has ended in the Supreme Court of Florida having twice upheld the authority of said committee to pursue the investigations it has undertaken, and which litigation has now culminated in the United States Supreme Court having issued a stay order against said committee on an unsworn and unverified application for stay pending application by certain witnesses subpoenaed before the committee for certiorari in the United States Supreme Court; and

‘WHEREAS, because of lack of time said proceedings still are lodged undisposed of in the United States Supreme Court with the committee powerless to proceed with its investigations because of that Court’s stay order; and

‘WHEREAS, the issues embraced in said litigation involve fundamental principles of State’s rights and State’s sovereignty as against centralized Federal power and Government [fol. 24] ment by judicial decree and constitute a fight for State sovereignty which this State can ill afford to abandon; and

‘WHEREAS, there still exists the same grave and pressing need for such a committee to exist in the interim between the 1959 and 1961 sessions of the legislature of Florida, to continue and complete the above two committees’ work, and to participate in and contest the efforts represented

by the above-referred to litigation to whittle away further at this State's rights and sovereignty, and to be ever ready to investigate any agitator who may appear in Florida in the interim,

'Now, THEREFORE, the following bill is proposed to be enacted by the legislature because of all the foregoing:

'Be It Enacted by the Legislature of the State of Florida:

'Section 1. There is hereby created a special committee of the legislature to be composed of seven (7) members, three (3) of whom shall be appointed from the membership [fol. 25] of the state senate by the president, and four (4) of whom shall be appointed from the membership of the state house of representatives by the speaker. The members of said committee shall serve as such until discharged by the president of the senate and the speaker of the house of representatives upon receipt of their report at the regular 1961 session of the legislature.

'Section 2. It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state. Such investigations shall be conducted with the purpose of reporting to this legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the state.

'Section 3. (1) The committee is authorized to employ such experts, clerical and other assistance as may be required to require by subpoena or otherwise the attendance of such witnesses and the production of such papers, books and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may deem necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any circuit court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the court shall constitute a direct and criminal contempt of court and the court shall punish said witness accordingly.

Section 4. The committee shall report to the 1961 regular session of the legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. The expenses of this committee, including necessary and regular expenses shall be paid from legislative expense, such total expenses not to exceed sixty-seven thousand five hundred dollars (\$67,500.00), which shall be expended under the direction of the committee.

Section 5. The joint committee set up by chapter 57-125, Laws of Florida, 1957, is hereby extended in all respects [fol. 28] so that it may continue to discharge its responsibilities as a party litigant on behalf of the state of Florida in the litigation above referred to until the appointment and organization of the committee provided for in this act shall become effective.

Section 6. This act shall take effect immediately upon becoming a law.

“The present hearings will be concerned with the activities of various organizations which have been or are presently operating in this State in the fields of, first, race relations; second, the coercive reform of social and educational practices and mores by litigation and pressured administrative action; third, of labor; fourth, of education; fifth, and other vital phases of life in this State.



"They shall also be concerned with the Communist Party, its members, Communist action and Communist front organization, their members, their aims and objectives, activities [fol. 29] ties and the degree, if any, to which Communists and Communistic influence has been successful in penetrating, infiltrating, and influencing the various organizations and members thereof which have been, or are now, operating in the above fields."

"You have been subpoenaed as a witness before this Committee in connection with its current investigation. There are some people who seem to think that because a witness has been subpoenaed before this Committee, that some inference or accusation that such a person is a Communist results from his being subpoenaed because of the nature of this Committee's inquiry."

"It is not the intention of this Committee to make any such inference by the mere fact of subpoenaing a witness, and this Committee has several times publicly stated that no such inference is to be drawn from the mere fact that a person has been subpoenaed."

"If you feel that any unfair inference has been made or [fol. 30] assumed by anyone against you because you have been subpoenaed before this body, you may have the privilege of making a short and concise statement denying that you are now or ever have been a member of the Communist Party itself; or of any Communist front or Communist action group, if you so desire."

Mr. Counsel, do you want the witnesses to retire?

Mr. Hawes: Mr. Chairman, I want, please sir, for all the witnesses to retire to their room except Fannie Stiller, who I would like to have as the first witness.

The Chairman: All witnesses retire to the witness room except Fannie Stiller.

(The following witness was represented by counsel Tobias Simon)

[fol. 31] Thereupon, FANNIE STILLER, having been called and duly sworn as a witness, was interrogated and testified as follows:

Examination.

By Mr. Hawes:

Q. Please state your full name.

A. Fannie Stiller.

Q. Do you have counsel with you?

A. I do.

Q. What is his name, for the record, please?

A. Tobias Simon.

Q. From Miami?

A. From Miami.

Q. Where do you live, please?

A. 4631 West 10th Avenue, in Hialeah.

Q. Is that Dade County, Florida?

A. Dade County, Florida.

Q. How long have you lived in Dade County?

A. Since February of '37.

Q. Where did you live immediately prior to coming to Dade County?

A. New York City.

Q. New York City.

How long did you live in New York City?

[fol. 32] A. Most of my—no, I was going to say most of my life, but since 1924 or 5, I believe.

Q. And where did you live before New York City, please?

A. Poland—no, Germany.

Q. Germany?

A. Uh huh.

Q. Is Richard Stiller your husband now?

A. Yes.

Q. When did you marry him?

A. (After conferring with counsel) I would like to know where that is relevant to the inquiry, please.

Q. What was your maiden name, please?

Mr. Simon: The same objection; you refuse to—

The Witness: I would like to know how it's relevant.



By Mr. Hawes:

Q. Mrs. Stiller, have you ever been or are you now a member of the Communist Party of the United States?

A. (After conferring with counsel) I regard that question as being irrelevant, in that it deals with any period—or any question which deals with a period prior to February [fol. 33] ary, 1957.

Q. Are you refusing to answer whether you are now or have ever been a member of the Communist Party?

A. (After conferring with counsel) I am not, and—well, I should—I started—I'm restricting my answers to the period of time of which I was a resident of Florida, and will say that I am not and have not been a member of the Communist Party in Florida.

Q. That is, since February of 1957?

A. Dealing with just that period, from February, 1957, as being pertinent to the work of the Committee.

Q. All right.

Have you, since you have been in Florida, been a member of the NAACP, or attended any NAACP meeting?

Mr. Simon: Answer the question.

The Witness: No.

By Mr. Hawes:

Q. You have not?

A. (The witness nodded negatively)

Q. Have you, since being in Florida, in Dade County, met any person that you previously knew to be a member [fol. 34] of the Communist Party?

A. (After conferring with counsel) Well, that question deals with knowledge before I moved here.

Q. I'm talking about knowledge since you were in Dade County, Florida, of persons that you've known since you have been there.

Have you met anyone that you knew to be a member of the Communist Party since you have been in Miami?

Mr. Simon: Counsel, may I request that the question be rephrased for the record, because I'm not sure as to what you mean?

By Mr. Hawes:

Q. Since you have been in Dade County, Florida, have you seen anyone or become associated with anyone who you knew, while you were in Florida, since you came here, to have been a member of the Communist Party?

A. (After conferring with counsel) No, I don't.

Q. The answer is "No"?

A. "No."

Q. Do you know a man named Don West?

[fol. 35] A. (After conferring with counsel) I would—

Q. Ma'am?

A. I would object to that on the ground that I don't think it's relevant to the inquiry.

Q. Well, I might state to you that the information that the Committee has indicates that Don West is a high Communist Party functionary, who has been in the area in Dade County, Florida, as recently as six weeks or two months ago.

A. (After conferring with counsel) I have never met that man since I have been in Florida.

Q. You have never met him since you were in Florida?

A. That's right.

Q. Did you know him before you came to Florida?

A. I object to that question as irrelevant, on the ground that it deals with the period up—prior to February of 1957.

Q. Did you know him as a Communist Party functionary before you came to Florida?

A. The same objection.

Q. Now, Mrs. Stiller, I want you to understand that I am talking about Don West, from Georgia, who has re-  
[fol. 36] cently become a resident of New York State, and I'll ask you if, in the last two years, you knew him as a high functionary in the Communist Party of the United States?

A. (After conferring with counsel) I think so too.

I think I've answered that question. No.

Q. You answered that you did not know him as such a functionary in the last two years?

A. (The witness nodded negatively)

Q. Did you know him in such capacity within the last three years?

A. (After conferring with counsel) My answer was restricted to February, 1957, when I moved into Florida.

Q. You refuse to answer any questions concerning any knowledge of any person back of 1957?

A. Of anything prior to the time I became a resident of Florida.

Q. About your knowledge of a person, or any organization, or anything else?

A. Or anything.

(Mr. Hawes conferred with the Chairman.)

The Chairman: Mrs. Stiller—

[fol. 37] The Witness: Yes.

The Chairman: —you may step down, but we would like you to stay on call for further questioning.

Mr. Simon: Mr. Chairman—

Mr. Hawes: Just one minute, please, ma'am.

By Mr. Hawes:

Q. Mrs. Stiller, were you known as Fannie Licht before you married Mr. Stiller?

Mr. Simon: Mr. Chairman, is the request that she step down being rescinded by your counsel?

Mr. Hawes: It is.

The Chairman: Yes sir.

The Witness: That's my maiden name.

: By Mr. Hawes:

Q. That's L-i-t-c-h—e-h-t?

A. L-i-e-h-t.

Q. Yes ma'am.

Did you know a man named Amando Penha, P-e-n-h-a, in the Communist Party of the United States?

A. (After conferring with counsel) I object on the [fol. 38] grounds that I want to know the relevancy of the question to the inquiry here.

Q. Have you ever been the southern regional organizer for the Communist Party?

A. On the relevancy—I object on the same ground.

Q. You object on the ground of relevancy?

A. (The witness nodded affirmatively)

Q. Have you ever been the chairman of the Communist Party in Yonkers, New York?

A. (After conferring with counsel) Could you tell me what the relevancy of that question is to this—to these proceedings?

Q. Are you declining to answer that question?

A. Yes, until the relevancy is explained.

Q. Have you ever been the secretary of the Communist Party in Worcester, New York?

A. The same.

Q. Have you ever been the organizational secretary of the Communist Party in Yonkers, New York?

A. The same.

Representative O'Neill: Is this the same objection, Counsel [fol. 39] sel? I'm not hearing very well down here.

The Witness: Yes, I'm—

Mr. Hawes: Yes sir.

The Witness: —I've asked for the relevancy.

The Chairman: Did you hear that one, Bill?

Representative O'Neill: Yes.

Mr. Hawes: Mr. Chairman, I have no further questions of this witness at this time.

Mr. Simon: Step down, Mrs. Stiller.

The Chairman: Step down, Mrs. Stiller.

Mr. Hawes: Call Abe Sorkin.

The Chairman: We would like to have you wait in the witness room. We may call you back later.

(Witness excused).

(The following witness was represented by counsel, Robert J. Ramer)

[fol. 40] Thereupon, ABE SORKIN, having been called and duly sworn as a witness, was interrogated and testified as follows:

Examination.

By Mr. Hawes:

Q. Please state your full name.

A. Abe Sorkin.

Q. Is that your full name?

A. Yes.

Q. Where do you live, Mr. Sorkin?

A. My mailing address, 298 N. W. 20th Street.

Q. Is that Miami, Dade County, Florida?

A. Miami, yes sir.

Q. Would you speak just a little louder, please, or move up there where the members of the Committee can hear you?

Do you have counsel with you?

A. Yes sir.

Q. For the record, what is his name?

A. Robert Ramer.

Q. From Miami?

A. Miami.

Q. How long have you lived in Dade County?

[fol. 41] A. About fourteen years.

Q. What is your business or occupation, please?

Mr. Simon: Mr. Chairman, I have been instructed by the guard not to speak to my client in the witness room.

I understand that this is supposed to have come from you or from some member of the Committee. I don't believe that such a statement was made, frankly; I don't think that's quite in keeping with the procedure.

Mr. Hawes: You can take—wait a minute—that's a mistake.

You can take your witness out of the—your man out of the witness room, or your client, and discuss anything you want to with him, but don't discuss their testimony, please, or what happened in here, in the presence of any other witness.

Mr. Simon: No, I don't intend to.

The Chairman: That was the only thing.

Mr. Hawes: That was the only intent of that, that there [Vol. 42] be no discussion in the presence of other witnesses.

Mr. Simon: All right, sir.

By Mr. Hawes:

Q. Mr. Sorkin, what is your business or occupation, please?

A. (Apparently reading from a prepared statement) I refuse to answer the question upon the following grounds:

It violates the constitutional rights protected by Sections 1, 2, 3, 12, 13 and 15 of the Florida Declaration of Rights and the 1st, 5th and 14th Amendments to the Federal Constitution.

No sufficiently compelling state interest has been shown to invade the freedoms guaranteed me by the Constitutions of the State of Florida and the United States of America.

The Committee is illegally constituted and is functioning illegally.

It is not pertinent to any competent subject of legislative inquiry and if it is, that pertinency has not been demonstrated to me.

The question violates principles set forth in *Tibson et al* [Vol. 41] vs. Florida Legislative Investigating Committee, 108 So. 2nd, 729.

An answer to the question will subject me and others to economic, political and social sanctions, as well as to possible physical injury and damage to property.

The question involves information in an area preempted by the Federal government.

This Committee was established and given investigative authority as a part of a legislative program of resistance to the United States Constitution and the Supreme Court's desegregation decisions, in order to harass, vilify and publicly embarrass the persons who support those Supreme Court decisions—

Q. Mr. Sorkin—just a moment—just a moment.

A. The information—

Q. Wait.

You have a right—I think counsel will tell you that you have a right to state any grounds of objection that you have,

legal grounds of objection to the question. You have not the right to make any speech about what this Committee is, or why it was formed, or any other purpose, and I'm going to ask, now, Counsellor, that the witness confine his statement [fol. 44] to legal grounds of the objection, please.

Mr. Ramer: Well, Counsel, there are just two more legal grounds that he has to set forth. If you'll bear with him; it's almost complete.

Mr. Hawes: Well, let me see. How much more has he got to add to what he's read?

Mr. Ramer: The last two paragraphs (Handing Mr. Hawes a paper instrument).

By Mr. Hawes:

Q. You may proceed to read those last two, if that's what you want to read.

A. The information sought is neither intended to nor could reasonably be expected to assist the Legislature in any proper legislative function.

No reasonable opportunity has been afforded me to disclose a factual basis for the conclusion that the giving of an answer to such question would result in an illegal invasion of my constitutional rights.

Mr. Hawes: Now, in order to save time, Counsel, I'm [fol. 45] not sure the Court Reporter got all that as he read it. Will you give it to him so he can read it?

Mr. Ramer: I'll give it to him, sure.

Mr. Hawes: Let me look at it first. I didn't hear all this witness said.

Now, Counsel, in order to save time, if it is the intention of this witness to decline to answer any other question that I propound to him, he can simply say that he refuses on the same grounds.

Mr. Ramer: That was the intention of this statement, Mr. Hawes.

Mr. Hawes: And I have checked here, and I find that your first ground incorporates, among his grounds for refusal to answer, the Fifth Amendment to the Federal Constitution.



Mr. Ramer: It does, sir; Section 12 of the Florida Declaration of Rights.

[fol. 46] By Mr. Hawes:

Q. All right, sir.

Mr. Sorkin, are you now, or have you ever been a member of the Communist Party of the United States?

A. (After conferring with counsel) I refuse to answer on the same grounds I have previously read.

Q. Have you, in Dade County, Miami, Florida, been a member of the Communist Party of the United States?

A. The same grounds.

Q. You decline—just decline on the same grounds?

A. Yes sir.

Q. You may do that, sir.

Are you now, or have you ever been a member of the NAACP in Miami, Dade County, Florida?

A. I refuse to answer on the same grounds.

Q. The same grounds?

A. Yes.

Q. Have you ever attended any meetings of the NAACP in Dade County, Florida?

A. I refuse to answer; the same grounds.

Q. Is it true that you were, in fact, a member of the [fol. 47] NAACP in Miami, and that you joined it at the direction of the Communist Party of the United States?

A. I refuse to answer on the same grounds.

Mr. Hawes: In order to save time, Counsellor, do I understand it to be the intention of this witness to decline to answer any question concerning any organization or person, and particularly, in relation to the NAACP or the Communist Party, on the same grounds?

Mr. Ramer: I would say that would be a fair, general statement.

Now, I don't want to waive any of my client's rights. If you have any particular questions which may not fall within that general statement, or may be exceptional, I suggest that you propound them, and then we'll see.



By Mr. Hawes:

Q. Have you gone under any alias since you've been in Dade County, Florida?

A. I refuse to answer on the same grounds.

Q. Did I understand you to refuse to testify as to what [fol. 48] you do for a living?

A. I refuse to answer on the same grounds previously read.

Q. How old are you, sir?

A. I refuse to answer on the same grounds.

Q. Where is your original home?

A. The same—refuse to answer on the same grounds.

Q. Are you a natural born American citizen?

A. I refuse to answer on the same grounds.

Mr. Hawes: All right, Mr. Sorkin. Come down.

The Chairman: We want you to wait in the witness room, Mr. Sorkin.

Representative O'Neill: I don't think he heard you, Mr. Chairman. I think you ought to—

The Chairman: Well, the Officer will attend to that.

(Witness excused)

Mr. Hawes: Mr. Chairman, I'd like to call Mr. Strickland to the stand, please, at this time.

The Chairman: Mr. Strickland, will you take the stand?

[fol. 49] Thereupon, R. J. STRICKLAND; having been called and duly sworn as a witness, was interrogated and testified as follows:

### Examination.

By Mr. Hawes:

Q. Please state your full name?

A. R. J. Strickland.

Q. Where do you live?

A. Tallahassee, Florida.

Q. Are you the Investigator for this Committee?

A. I am.

Q. How long have you served in that capacity?

A. Since October, 1956, with the exception of from April to October of 1957, I went back with the Committee.

Q. Mr. Strickland, during the time that you have been associated with this Committee as Investigator, have you conducted investigations and gathered evidence and maintained files reflecting the evidence you gathered, concerning the Communist Party and certain individual Communists, among other things, in this state?

[fol. 50] A. I have.

Q. Do you have those files in your possession?

A. I do.

Q. Now, Mr. Strickland, with regard to Augusta Birnberg, of Miami, do you have any information regarding that woman?

A. I do, sir.

Q. Would you state, very briefly, so that the Committee and the Counsel for the various witnesses who are yet to testify may hear what the nature of that evidence is, or information?

A. Augusta Birnberg, of Miami, Florida, or Dade County, has been a member of the League of the Communist Party, carrying card Number 357.

She was also a member of several other Communist front organizations and has been cited by the House Un-American Activities Committee.

Q. Do you have any information concerning a man named Waller?

A. I do, sir.

Q. Would you give, very briefly and generally, the nature of that information concerning that individual?

A. Mr. Edward E. Waller was at one time a member of [fol. 51] the Communist Party, but as to the information I have at this time, he is no longer such.

He lives in Naples, Florida, at this time; was formerly of Miami. Admitted being a member of the Communist Party previously; and stated to me that he had been instructed by the Communist Party itself to infiltrate the NAACP and other organizations, and that he, on occasions, did attend the meetings of the NAACP in and around Dade County.

Q. Do you have any information regarding a man named Nimmo?

A. I do, sir.

Q. State his full name and briefly, the general nature of that information?

A. James Nigmo, formerly of Miami, but, according to information in hand at this time, is now in New York State; was an admitted member of the Communist Party, but as of this time, states that he does not belong to the Party.

Q. Is he formerly of Miami?

A. That is correct, sir.

Q. Do you have any information on the witness, Abe Sorkin, who was just in the room?

A. I do, sir.

[fol. 52] Q. State generally the nature of the information concerning that individual?

A. Abe Sorkin, of Miami, Dade County, the information indicates that he is or has been a member of the Communist Party and has, according to his own testimony, at one time been a member of the NAACP.

Q. In Miami?

A. In Miami.

Q. Do you have any information concerning a man named Charles Marks, of Dade County, Florida?

A. I do, sir.

Q. State his full name, and the nature of that information?

A. Charles Marks, of Dade County, Florida, is or was, until the recent past, a member of the Communist Party, carrying card Number 7166 and 66566.

Also, other information, that he became actively or very active in the Communist Party since 1939, and possibly still active in Dade County.

Q. Do you have any information concerning a man named Myron Marks?

A. I do, sir.

Q. State, generally, the nature of that information?

[fol. 53] A. Myron Marks, of Dade County, Miami, Florida, has been, in the past, and according to information in hand, is now a member of the Communist Party, and also a member of several other cited organizations.

Q. By "cited," do you mean Communist front or apparatus organizations?

A. Communist front and organizations which are very strongly affiliated with the Communist Party.

Q. Yes sir.

Is he any relation, if you know, to Charles Marks?

A. He is the son of Charles Marks.

Q. Do you have any information concerning Leo Sheiner, formerly of Miami—

A. I do.

Q. —Dade County, Florida?

A. I do.

Q. What is the nature of that information?

A. Previous testimony before this Committee places him as a member of the Communist Party, which membership he has refused to deny under oath.

Also, the photostatic copies of deposit slips of the Miami NAACP account reflect that Leo Sheiner has been a contributor or giving money to that organization.

[fol. 54] Q. Reflect income to the NAACP from him?

A. It does, sir.

Q. Do you have any information on him belonging to any other Communist or Communist front organizations?

A. I do, sir.

It is known that he has belonged to many Communist front or affiliated organizations of the Communist Party.

Q. Do you have any information concerning a man named Charles Smolikoff?

A. Yes sir.

Charles Smolikoff, formerly of Miami, Dade County; known also under the name of Charles Doraine, Charles Small, Charles Stevens and Charles Boraine, has carried Communist Party card Number 64511.

He at one time was known as one of the top Communist organizers in the unions of Dade County, and rose to positions of extreme influence in the Communist Party since that time.

Q. Do you have any information concerning one Tess Kantor—

A. I do, sir.

[fol. 55] Q. —of Dade County?

A. Tess Kantor, formerly of Miami, was a member of the Communist Party, and was very active in various Communist front organizations in that area.

Q. Do you have any information concerning an individual named Leah Benomovsky?

A. I do, sir.

Leah Adler Benomovsky, formerly of Dade County, Miami, Florida, was a member of the Communist Party, carrying card Number 623, and was for many years active in Communist front and affiliated organizations of that location in the state.

Q. Have you any information concerning an individual named Louis Poppo?

A. Louis Poppo, of Miami, was a member of the Communist Party, but is believed at this time not to be affiliated with them.

Q. Do you have any information concerning one Manny Graff?

A. Emanuel "Manny" Graff, formerly of Miami, was also a member of the Communist Party and many Communist front and organizations affiliated with the Communist Party.

Q. What about Bobbie Graff?

[fol. 56] A. Bobbie Graff, formerly of Miami, was also a member of the Communist Party and affiliated with the Communist front and organizations of that area.

Q. What about Michael Santzek?

A. Michael Santzek, of Miami, was a member of the Communist Party, and was affiliated in several front organizations, or Communist front organizations of Dade County.

Q. You say he was. Do you have reason to believe that he is now or not?

A. I do, sir.

Upon appearing before the State's Attorney in Dade County, he refused to answer any questions propounded to him under oath, and upon being presented a non-Communist oath in the painter's union, of which he was a member, he refused to sign same.

Q. You have no information as to what his present status is, if any, with the Communist Party, though?

A. I do not, sir.

Q. All right, sir.

Now, Mr. Strickland, I think you have mentioned fourteen people there. Have you any information with regard to [fol. 57] whether they have ever been members of, or participated in meetings of the NAACP in Miami?

A. In regard to the above-mentioned fourteen people, it is my information that each of them has been a member of and/or participated in the meetings and other affairs of the NAACP in Dade County, Florida.

Q. Either members, or else they were members, and participated, or just participated in meetings of the NAACP?

A. That is correct, sir.

Q. Now, Mr. Strickland, do you have any information in hand regarding any other individuals who are from Dade County, indicating that they are or have been either members of the Communist Party itself or active in Communist front organizations in Dade County within the last, say, six or seven years?

A. Yes sir, I do.

Information in the Committee's possession indicates that the following thirty-three people whom I will name, are presently, or up to the very recent past were either members of the Communist Party itself and/or were members of the, or an active participant in the Communist Party [fol. 58] fronts or Communist affiliated organizations in Miami and Dade County.

Q. Read that list of names, please.

A. Pablo Cruz Lima, Samuel Zuckerman, Leah Zuckerman, Irving Robinson, Erwin Stander, Philip Feldman, Leah Feldman, Morris Rohinsky, Jose Carboinnell, Rose Marks, Walter Marks, Jack Begler, Nathan Sirota, Rose Waeksman Kilpatrick, Phillip Seligman, Harry Sehermer, Joe Solomon, Molly Solomon, Louis Powesky, Anna Rosenblatt, Harry Rosenoff, Helen Rosenoff, Samuel Hirsch, David Gold, Rebecca Gold, Irving Epstein, Roselyn Epstein, Jacob Novikoff, Anna Novikoff, Lillian Novikoff, Lillian Schoen and Irwin Schoen.

Q. As I understand your statement, Mr. Strickland, those last named thirty-three people, your information indicates that each of them has been at least active in the recent past, and at least active in Communist front organizations in Dade County?

A. That is correct, sir.

Q. And on some of them, that they have, and recently have been members of the Party itself?

A. That is right, sir.

Q. All right, sir.

[fol. 59] Now, have you, in your files, any information concerning other individuals, as to actual Communist Party affiliations in Dade County there before you on your notes?

A. I do, sir.

The following five people, all of which are present or past residents of Dade County, according to my information, are Party members, present and/or past:

Philip Finkel, carrying Communist Party card Number 51840 and 56509; Jenny Gladstone Jaffe, carrying Party card Number 192; John Gladstone, carrying Communist Party card Number 31265; James Latin, carrying Communist Party card Number 67737, 71755 and Number 72373; Irving Koreman, carrying Number 337.

Q. All right, sir.

Now, Mr. Strickland, in regard to those numbers of those people and others, as I understand you, you are not saying those are current card numbers, but, at one time or other, those people carried those cards?

A. That is correct, sir. They were carrying those cards at one time or another as a member of the Communist Party.

[fol. 60] Q. All right, sir.

Mr. Strickland, have you, from time to time, had occasion to examine Communist Party cards?

A. I have, yes sir.

Q. Is there a legend, if you know, on those cards with regard to the rights and duties of Communist Party members?

A. Yes sir, there is.

Q. Do you have that legend before you, and if so, would you read what that legend is into the record here?

A. I will, sir. You want me to read that, or just in reference, call your attention to Paragraphs 3 and 4?

Q. Read the whole thing into the record.

A. "Rights And Duties Of Party Members

"1. To attend club meetings, read the Party press and literature, pay dues regularly and be active on behalf of the program and policies of the Party.



"2. To at all times loyally defend the interests of the working class against the forces of Fascism and reaction.

"3. To fight against all forms of national oppression, [fol. 61] discrimination and segregation, and all ideological influences and practices of 'racial' theories.

"4. To fight for the full social, political and economical equality of the Negro people, for Negro and white unity.

"5. To participate in working out all policies and tasks of the club, and to regularly examine the execution of such policies.

"6. To vote for all officers, committees and delegates, and be elected to any office or committee in accord with provisions of the Constitution.

"7. To appeal any decision with which there is disagreement to the next higher body, carrying out the decision while appeal is pending.

"8. To strive to master the program and policies of the Party, the principles of Marxism-Leninism."

Mr. Hawes: All right, Mr. Strickland, come down, please sir.

Mr. Simon: Mr. Chairman, I don't imagine that I would have the right to cross examine at this time, would I, sir?

The Chairman: No sir.

(Witness excused).

[fol. 62] Mr. Hawes: Now, call Reverend Gibson, Theodore Gibson.

(The following witness was represented by Counsel, Robert L. Carter, G. E. Graves, Jr., and Frank D. Reeves)



Thereupon, THEODORE R. GIBSON, having been called and duly sworn as a witness, was interrogated and testified as follows:

Examination.

By Mr. Hawes:

Q. Please state your full name, Reverend.

A. My name is Theodore R. Gibson.

Q. And where do you live, please?

A. 14680 Harrison Street, Miami, Dade County, Florida.

Q. You were subpoenaed to this hearing, of course?

A. I was, sir.

Q. I believe your subpoena called for certain records, or membership lists of the NAACP in Dade County?

A. It did, sir.

Q. Have you any of the records called for by that sub-  
[fol. 63] poena in your possession now?

A. At this hearing?

Q. Yes.

A. I do not have, sir.

Q. You have not brought any with you?

Do you have any such records in your possession, Reverend?

A. With me?

Q. Not with you, but any place?

A. I have, sir.

Q. Do you have the membership records of the NAACP in Dade County, Florida, in your possession?

A. I have.

Q. But not with you?

A. I do not have with me.

Q. Will you state, please, what period of time those records cover?

A. The records I have cover only the current year.

Q. By the way, Reverend, before we get any further, you do have counsel present with you today?

A. I have, yes sir.

Q. And for the record, would you name them, please?  
[fol. 64] A. Mr. Robert Carter, Mr. Frank Reeves and Mr. G. E. Graves.

Q. Now—

Senator Johns: Where are they from, Counsellor?

By Mr. Hawes:

Q. Would you state where your counsel are from?

A. Mr. Carter is from New York City; Mr. Reeves is from Washington, D.C.; Mr. Graves is from Miami, Florida.

Q. Now, Reverend, you were subpoenaed previously, were you not, to a hearing of the predecessor of this Committee in Miami?

A. I was, sir.

Q. And did your subpoena to that Committee call for certain membership records of the NAACP in Dade County?

A. It did, sir.

Q. And you didn't bring any records with you to that meeting, did you?

A. I did not.

Q. Are the records that you now have in your possession different from the ones you had at that time?

[fol. 65] A. No; they are not different, in that our membership list is only a year old. We don't keep them beyond a year.

It's a current thing. A man is a member for one year, and after the end of the year, if he has not renewed his membership, he's no longer a member.

Q. Are you telling me, then, that you destroy the membership records of members who do not renew their membership each year, and keep only the current records?

A. What I am saying is, when an individual does not renew his membership at the expiration of a year, the current calendar year, he is no longer a member of NAACP.

Q. What happens to his record of membership that you have at the end of that year, when he doesn't renew?

A. Well, sir, we keep a file, and the file must be kept current. We have no need for it.

Q. Do you pull the old card out, the old membership card?

A. Get rid of it, make room for a new—for the new card.

Q. Are all memberships on a calendar year?

[fol. 66] For instance, if a man came in in November, would his calendar year be till the next November—

A. Well, let me put it—

Q. —or is there a fiscal cut-off?

A. Let me say this: Ordinarily, we conduct a membership campaign, say, in the fall of the year, and that runs until the next fall. We would be beginning our membership drive now.

Now, it is possible, and it does happen, that people come in the course of the year and join, but, by and large, we run, say—we run our membership, say, in the fall, and that runs until the next fall, but it does not mean that you cannot join if you do not join in the fall drive; that you can join any other time during the year.

Q. But should you join in the middle of the year instead of the fall, would your membership run from the middle of the year to the middle of the year, or would it be cut off at some fiscal period?

Do you understand what I'm—

A. Yes.

Q. —trying to get at?

A. What we would do is let the membership run until the next year at that time, but ordinarily, all of our membership, sir, as I said, are given in the fall.

Q. Then, your membership would run from the year—a year from the date it was issued, but most of them will run from the fall to the fall?

A. Yes sir.

Q. Without, at this time, asking you to reveal the identity of any member of the NAACP, Reverend—

A. I didn't get that, sir.

Q. I say, without asking you for any identity of any member of the NAACP at this time, would you please tell the Committee how many members there are in the Dade County NAACP?

A. May I ask whether or not that—let me confer with my counsel.

(The witness conferred with his counsel)

A. (Continuing) To be perfectly honest, I don't think we could really say how many members we have as of now. We have within the neighborhood of about a thousand members.

I think that's about as accurate as we can get.

Q. If you should consult your files, of course, you could tell accurately, couldn't you?

(fol. 68) A. Yes, and frankly, you wouldn't find I'm too much off.

Q. That's a fairly close estimate?

A. That's fairly close.

Q. Now, Reverend, why have you not brought the membership files called for by the subpoena with you to this hearing?

A. I think that's a good question.

I would like to make a statement, since you said I could, at the—you know, when we were in here.

I would like to make a statement. May I?

Q. You are familiar, I believe, with the rules of the Committee by now, Reverend, that you are allowed to make a short, concise statement about your legal position here, but you understand, you're not to make a speech or anything of that nature.

A. Well, let's say, I don't know what you mean by "speech."

Q. You can state your—do you have any legal grounds, do you have legal grounds for not bringing the records here?

A. That's what I want to state.

Q. All right. That's perfectly permissible.

A. In the first place, let's—I have two reasons:

(fol. 69) In the first place, I think it is—we should say, for the benefit of this Committee, that since 1950, when our national convention met in Boston, we took—we passed resolutions excluding from our ranks any and all persons who may have subversive tendencies.

I think I am correct—as a matter of fact, I know I am correct, that each year thereafter, we have passed a similar resolution, reaffirming our position, and let me say that if this Committee knows of anybody who is said to be and has been proven to be a member of any subversive group, and you would give me, as the president of the Miami branch, that person's or those persons' names, we, through implementation by the convention, are authorized to exclude, put out of the organization immediately, forthwith, any such persons.

I have in my possession, for the benefit of the Committee—I would like for you to take the copies of the resolutions that we have passed repeatedly, even the original resolution we have—

Representative O'Neill: Mr. Chairman, I hate to interrupt the witness. However, I must interrupt for the reason [fol. 70] that he is not complying with the request of counsel, that if he has any legal objection—he's making a dissertation as to what he could do and what this Committee could do, and which is not part of—

The Chairman: I think he's attempting to explain.

Representative O'Neill: —what his objections are.

The Chairman: I'd like to—O'Neill, I think that he's attempting to explain why he didn't bring them, and then we can abide by whether we want to accept that as a reason or not.

I would like to hear it.

Are you about through?

The Witness: I have one other reason.

The Chairman: All right.

The Witness: I would like for these resolutions to—I would like to offer these resolutions as a part of the Committee's files, so that our position can be made very clear. [fol. 71] Now, then, the other reason is this: For you to ask me to bring the lists of—the membership lists of persons who are identified with NAACP is to ask me to give up a legal right of ours, the right of association.

Brethren, I don't have to tell you that the NAACP in Florida, and certainly, this is true of practically everywhere in the South, is under attack, and people are afraid of the intimidation. It's certainly true that—

Representative O'Neill: Mr. Chairman—

The Witness: —name or names of any of the persons—

Representative O'Neill: Mr. Chairman.

The Chairman: Yes.

Representative O'Neill: I would like to make a motion.

I move you, sir, that the witness be instructed to state his legal objections to the questions, and not make a dissertation, and ask that the Chairman call for a vote upon that motion.

Senator Johns: I second the motion.

The Witness: Mr. Chairman.

The Chairman: Yes, yes.

The Witness: Am I not permitted to say why?

Now, I'm trying to cooperate. I want to be in good taste—

The Chairman: I think the man is trying to give his legal reasons, O'Neill.

Representative O'Neill: I have no objection to him stating the legal reason and a valid reason.

We have not asked him to turn over to this Committee any list of membership of the National Association for the Advancement of Colored People in Miami. We have only subpoenaed those records to be brought before this Committee—

The Chairman: That's right.

Representative O'Neill: —for the purpose of carrying [fol. 73] on an inquiry into certain phases of activities of the NAACP.

We have not asked for the records; we've only asked that they be brought here for the purpose of reference.

Therefore, I think that this—whatever resolutions they might pass, has nothing to do with whether he did or did not bring them. I think that clearly, if he has a subpoena duces tecum, he's supposed to bring those records here; and what he has stated is not a legal ground for refusal to bring those records to this Committee meeting.

(Mr. Hawes conferred with several members of the Committee)

Mr. Reeves: Aren't you about through with your statement anyhow?

The Witness: Sir, I want to be honest—

Representative O'Neill: I'll withdraw my motion, Mr. Chairman, if he's nearly through with his statement.

I didn't come up here to listen to a dissertation; I came up here to listen to evidence.

[fol. 74] The Witness: Mr. Chairman—

The Chairman: Keep it as brief as you can, and go ahead.

The Witness: I'm not a lawyer; I'm a clergyman; and I can't frame phraseology to those of the lawyers.

Let me say that under the Constitution, we have a right of association, and if that be true, we find ourselves hard put in a southern climate, such as we—we have all over the South, especially in Florida, where, say, we in the Miami branch have spearheaded movements to bring about the integration of schools and parks and playgrounds; and certainly, if people who join our organization discover that we are going to disclose their identity in the organization, that is a sure way that our organization would be wrecked, and for that reason, we feel that we have a legal right that needs to be cleared up, sir.

The Chairman: All right.

[fol. 75] By Mr. Hawes:

Q. Reverend, in other words, you are declining, as I understand you, to bring your membership lists with you on two grounds: First, on the ground that the NAACP itself has passed a resolution authorizing you to clean your own house—

A. And that we have never been cited by the Attorney General as being subversive, or any other governmental agency.

Q. And second, you claim your privilege under the appropriate amendment to the Federal Constitution, of freedom of association, and you claim that the subpoena duces tecum asking for your membership lists to be brought here with you, violates your constitutional privilege in that regard?

A. If that's the way it is—

Q. Is that what you are stating?

A. That's our official position, sir.

Q. All right.

Now, are you aware of the fact, Reverend, that we're not actually asking you to turn over to this Committee those records, but that we're asking that you bring those records here for the purpose of consulting them yourself and telling us, under oath, after consulting them, whether or not [fol. 76] certain people who we will name are members, or have been members of your organization?

A. I'm aware of it.



Q. You are aware of that?

A. Yes.

Q. And you decline to bring the records for that purpose?

A. That's correct.

(The witness consulted frequently with his counsel before answering questions propounded)

By Mr. Hawes:

Q. Reverend, you were a member, were you not, a party to the litigation in the Supreme Court of Florida, entitled "Theodore R. Gibson, Ruth Perry, Vernell Albury, Grattan E. Graves, and others, vs. The Florida Legislative Investigation Committee"?

A. I was, sir.

Q. I'm referring, now, to the case that counsel for yourself and the other three witnesses who I named, carried to the U. S. Supreme Court on petition for certiorari.

You're aware of that?

A. Yes, I am.

Q. Are you aware of the fact that the Supreme Court [fol. 77] of Florida, in its specific findings in that case, found as follows:

"Witnesses who were directed to have available the records of NAACP should have them available, or else disclose their whereabouts, if they can do either. Such witnesses may be required to refer to such records and answer under oath any inquiry regarding any individuals whose association with NAACP is shown to be pertinent to the inquiry, in accord with the rules announced in this opinion."

Are you aware of the fact that the Court found that to be the law of this case that you were in?

A. I am.

Q. And of course, you're aware of the fact that the U. S. Supreme Court denied certiorari, or refused to upset that decision of the Supreme Court of Florida?

A. May I—

Q. Surely.

A. I am aware of the fact that the United States Su-

preme Court denied the writ of certiorari, but I am not—I do not know what the legal effects of that denial are.

Q. In all your suits, you know that they did not take jurisdiction [fol. 78] dictum and do anything about the Supreme Court of Florida's decision?

A. I presume that's true.

Q. And in the face of that, it is still your position that you decline even to bring the records that you admit you have here for the purpose of having them at your feet to consult with, and answer our questions?

A. That's right.

Q. Now, Reverend, do you know a person named Augusta Birnberg, of Miami?

A. Counsel, may I ask, what is the pertinency of the question?

Q. Reverend, the testimony before this Committee shows this individual to be a resident of Miami, or Dade County, Florida, and that this individual is now or has been a member of the Communist Party, and that there is certain evidence that this person has either been a member of the NAACP or has participated in meetings of the NAACP in Dade County, and that is the purpose of my asking the question, and the pertinency.

I want to know if you know her, and if you know her to be a member of the NAACP in Dade County, or have ever seen her in any NAACP meeting there?

[fol. 79] A. Counsel, I do not know any such name.

Q. You don't know the name?

A. I don't know the name, nor do I know the person.

Q. I show you a photograph, and ask you if you recognize the woman on that photograph, or in that photograph?

A. No.

Q. You do not recognize that—

A. No, I do not.

Q. Now, Reverend, in order to save time, I'm going to ask you about whether you know certain other people, and the pertinency and relevancy of the question will be the—it is the same as what I've just stated as to that individual in each of the cases.

I could sit here, and you could ask me the pertinency each time, and I could take the time to make the same state-

ment over and over in regard to the next few people that I'm going to ask you about. I don't think it would add anything to your rights, or detract anything from your rights, for us to dispense with that little formality; it will be the same in each case.

[fol. 80] Q. Did you ever know a man named Edward Waller in Miami as a member of the NAACP?

A. I did not.

Q. You did not?

A. No.

Q. Do you recognize this man in this photograph—

A. No.

Q. —Reverend?

A. No.

Q. You do not?

A. No sir.

Q. Did you know a man in Miami named James Nimmo, to be a member of the NAACP?

A. Counsel, I know the man, but not as a member of NAACP.

I know him—as a matter of fact, let me say this: Before I even went to college, he was in Miami; so, I do not know him in connection with NAACP, but I do know him as an individual.

Q. Let me ask you this, Reverend: How long have you been active in the NAACP yourself in Miami? It may—maybe I'm going before your time in some of these—

A. Well, let's say—

[fol. 81] Q. —individual cases which, if that's true, we're just wasting time.

A. Well, let me say this: I've been president for five years, and beyond that time, I doubt seriously, I could answer any—

Q. You've been—

A. President.

Q. —president for five years?

A. Yes.

Q. Were you a member before that time?

A. I was.

Q. Did you attend the meetings regularly?

A. Off and on.

Now, I say this: If I said that I was very active, that would not be true.

Q. Well, did you know a man named Abe Sorkin down there as a member of the NAACP?

A. No. I—I saw him in there. I know him, but I mean—let me say how I know him: He runs a tiling station on 20th Street and Third Avenue, and I—naturally I would pass, but I do not know him as a member of NAACP.

Q. Do you know a man named Charles Marks—

A. No.

Q. —as a member of the NAACP?

A. No, I don't know him. I don't know Charles Marks. [fol. 82]

Q. Do you know Myron Marks?

A. I don't know her.

Q. Do you recognize either of the men in that photograph?

A. No sir.

Q. You do not?

A. Never saw them before.

Q. Do you, or did you know Leo Sheiner?

A. I had seen him, but not as a member of NAACP. I knew him—well, let me say this: I know him from newspaper articles—I had seen; that's about all I know about Leo Sheiner.

I don't know him.

Q. Did you ever see him in a NAACP meeting that you know of?

A. No sir.

Q. Do you know whether he ever represented any of the NAACP organizations in Dade County?

A. That would be before my time. The only counsel we had in my time was—I mean, he was nowhere around in my day; that is, in the five years I was president.

Q. Which part of the Dade County NAACP are you president of, Reverend?

[fol. 83] A. I am the president of the Greater—well, I'm—frankly, I'm president of the Greater Miami Chapter of NAACP.

Q. Does that cover the whole City of Miami?

A. Yes sir.

Q. Does it cover Miami Beach too?

A. Well, yes (laughing).

I laugh because there's no chapter anyhow.

Q. Does it cover—I'm talking about areawise, now.

Are there individual organizations in Miami—

A. No sir.

Q. —or Miami Beach under that?

A. No sir, no sir, no.

Q. There are not?

A. No sir, no sir.

The Chairman: There's just one in Dade County?

By Mr. Hawes:

Q. There's just one in Dade County, or—

A. There's only one now.

Q. Only one now?

A. Yes. Some years ago there were other branches, but [fol. 84] only one active branch in Dade County now.

Q. How long have you been all under one branch?

A. Oh, I don't know.

Q. Has it been since you were president, all the time since you were president?

A. Yes, yes. It was in my administration, I'm pretty sure—I know it was in my administration we had what is known as the Greater Miami—that took in all of the—anybody who lived in any of the municipalities could join the Miami branch.

Q. That's happened since you went in office, within the last five years?

A. Yes sir.

Q. Now, prior to that time, of course, you were not associated with all of the individual branches of Dade County, were you?

A. No sir, I was—I've always maintained my membership in the Greater Miami branch, and that's all I know about.

Q. What I'm getting at is, you didn't know all of the members of all of the separate branches that were in Dade County before they consolidated into this one?

[fol. 85] A. No sir, no sir.

And let me say this, that we don't want to be unmindful of the fact—

The Chairman: Excuse me. Excuse the interruption.

By Mr. Hawes:

Q. Reverend, excuse me for that interruption.

A. That's all right.

Q. What I was getting at is, I wanted to find out, of course, before the consolidation, there were several branches down there, as I understand it?

A. More than one; there was more than one.

Q. By "several," I mean two or more.

A. Yes, yes sir.

Q. Of which you didn't attend the meetings of all of those branches?

A. (The witness nodded negatively)

Q. So that I may be asking the wrong man in regard to some of these people; that's what I'm getting at.

A. That's highly possible.

Q. All right. Now, we'll continue on, and let's see if you know any of these others.

Did you know a man named Charles Smolikoff in the [fol. 86] NAACP?

A. No, I—

Q. How about—

A. Let's say I read about it in the paper; that's all I know.

Q. What about Tess Kantor?

A. I don't know the man.

Q. That's a woman.

A. I don't know the woman.

Q. Did you know Leah Adler Benomovsky?

A. Never heard the name before.

Q. You never read of that name?

A. No.

Q. Do you know—

A. Let's say, if I did, I don't recall it.

Q. Did you know Louis Popp?

A. I did, sir.

Q. Did you know him in the NAACP?

A. Well, he was active before my day, but I do know Louis Popp, and that's—I met him, I saw him at the last hearing; and plus, he lives in the section where I live, but I don't know him as a—as affiliated with NAACP.

Q. At this time?

A. No sir.

[fol. 87] Q. Do you know whether he has been or not?

A. No, I don't know.

Let me say that I only—I can only be of—I can only be certain of the last five years, and if a person does not renew his membership at the end of the year, I want you to know, believe me—

Q. Did you ever talk to him about whether he was a member or not?

A. No, I don't—I haven't seen Lou Poppo since the last hearing.

Q. Did you know Manny Graff?

A. I don't know him.

Q. How about Bobbie Graff?

A. Don't know them, sir.

Q. Did you know Michael Shantzek?

A. Never heard that name.

Q. Now, the names, of course, of people that I just called off to you, sometimes you recognize the name, sometimes you don't?

A. That's true.

Q. Sometimes you associate a face with a name; sometimes you don't?

A. (The witness nodded affirmatively)

Q. I have here in front of me, Reverend, a list of thirty- [fol. 88] three people who, the information in the Committee's files and previous testimony show have recently been members, either of the Communist Party or actively affiliated with some one or more Communist front organizations in Dadq County; and I want to know whether or not—I don't have photographs of these people that I can show you; I want to know whether or not you will, or whether you will refuse to bring your membership lists here for the purpose of comparing them with these thirty-some-odd names that I have here before me, which you might identify some or you might not, off of your membership lists, whereas, you might not recognize the name?

Will you do that or will you not?

A. Counsel, our position is that if you call those names, and I know those people, I will acknowledge, honestly and



truthfully, but so far as identifying those people on the basis of our membership lists, sir, I must respectfully say that we will not bring it, we will not do that.

Representative O'Neill: Is the witness refusing to bring the lists for the purpose of comparison?

Mr. Hawes: He has refused to do that, Mr. O'Neill.

[fol. 89] . . . By Mr. Hawes:

Q. Reverend, so there won't be any misunderstanding of your position, regardless of the names or the information that I have concerning the names of the people that I have here before me, you simply will not bring your records here for the purpose of comparison, you, yourself, examining them?

A. No sir. I would—if you call those names, I will unequivocally and truthfully tell you if I know those people.

Q. Based strictly on the name—

A. Yes sir.

Q. —your recollection of the name?

A. Yes sir.

Q. But you will not bring your records for the purpose of comparing your membership rolls with the list of names that I have?

A. No, no.

You see, that goes right back to what I said: once these people find out that I am disclosing their names, what happens is this: Economic reprisals and intimidation, telephone calls, you see?

Q. Well, of course, if you sit here and recognize the name of a man, and said you recognized him as a member [fol. 90] of the NAACP, that would be true in that case, wouldn't it, just as true?

A. Sir, I think my position was made clearly.

I would—if you call those names, and I know any of them, I will truthfully and unequivocally say I know them, just as I have done in the past.

Mr. Hawes: Mr. Chairman, I ask that the Chair instruct the witness to secure and bring here the membership lists in his possession, for the purpose of having them before him to consult, to determine whether the people I want to

ask him about here, on whom we have information, are actually members of the NAACP, according to his membership records or not.

Representative O'Neill: Mr. Hawes, those lists of names are the ones you've referred to previously as being subversive, or members of the Communist Party or affiliated organizations, is that correct?

The Chairman: You are directing your question to him? [fol. 91] Representative O'Neill: Yes.

Mr. Hawes: It is a list of names that I have referred to, upon which individuals we have that information, either that they are a member of the Communist Party or of Communist front organizations, Mr. O'Neill, yes sir.

The Chairman: Reverend Gibson, the Chair directs you to secure immediately, for the purpose of this Committee, and for your use before this Committee, in ascertaining whether or not these people are members of your organization.

The Witness: Sir, my position is the same.

By Mr. Hawes:

Q. You decline to do so?

A. I respectfully decline to do so.

Representative O'Neill: Mr. Chairman, I move you, sir, that the Counsel for this Committee be directed to prepare the necessary petition to file in the proper Circuit Court, a citation for contempt of this witness, Theodore R. Gibson.

[fol. 92] The Chairman: Is there a second to that motion?

Senator Hodges: I second the motion.

The Chairman: It's been moved and seconded that the witness, Reverend Gibson—that the attorney file immediately proceedings under this law to hold the witness in contempt for refusal to produce the records, as requested under the law by the Chairman.

All in favor.

(All Committee members voted "aye.")

The Chairman: Opposed.

(No response)

The Chairman: So ordered.

Mr. Hawes: All right, Reverend, you may come down.

Representative O'Neill: Are you excusing this witness, Mr. Counsel, from further attendance?

Mr. Hawes: Please wait for a short time. I don't know whether we'll want to call you back or not yet.

(Witness excused)

[fol. 93] Mr. Hawes: Counsel, am I correct in my recollection that your other clients—I believe you stated you represented—

Mr. Reeves: Mrs. Albury—

Mr. Hawes: Albury.

Mr. Reeves: Mr. Graves.

Mr. Hawes: Graves.

Mr. Reeves: Mrs. Perry.

Mr. Hawes: Perry, and—

Mr. Reeves: Mr. Lowry, Reverend Lowry.

Mr. Hawes: Reverend Lowry.

• Mr. Reeves: Yes.

None of those people have in their possession or custody any of the records which you've requested.

Mr. Carter: They have so announced.

Mr. Reeves: Yes, they have stated that.

Mr. Hawes: That is my recollection of their statements.

Mr. Reeves: That is the fact.

Mr. Hawes: Call Edward T. Graham, please.

[fol. 94] The Chairman: Call Reverend Graham.

(The following witness was represented by Counsel, Tobias Simon and Howard W. Dixon)

Thereupon, EDWARD T. GRAHAM, having been called and duly sworn as a witness, was interrogated and testified as follows:

Examination.

By Mr. Hawes:

Q. Please state your full name.

A. Edward T. Graham.

Q. Do you have counsel with you?

Q. Yes, I do.

Q. Now the record, would you state the names?

A. Tobias Simon and Howard Hanson.

Q. Where do you live, please?

A. 3504 N. W. 17th Street, Miami, in Dade County, Florida.

Q. And I believe you've lived there for some—about sixteen years, approximately?

A. About thirteen years at that address; in Miami, about sixteen years, yes sir.

Q. Now, you are the same Edward T. Graham, are you not, who was subpoenaed before the predecessor of this Committee in a hearing in Miami?

A. The same.

Q. And did your subpoena then call for certain records of the N.A.A.P. membership lists and books and records?

A. And the Florida Council, I believe.

Q. Yes.

And you did not bring any of the records with you to that hearing, as I recall?

A. As the former hearing.

Q. Yes.

A. No, I did not, sir.

Q. The subpoena that you now have just read me, did it call for any of the books and records and membership lists of the N.A.A.P.?

A. Yes, it does.

Q. Do you have any of them in your possession?

A. No sir.

Q. Have you had any membership lists or records, showing the membership in the N.A.A.P. in your possession since you received this subpoena?

A. Mr. Hanson, would the answer to that question be pertinent, may I ask, to the inquiry?

Q. I think it is most pertinent.

A. Will you be good enough to show me how?

Q. If, as a matter of fact, you had those records in your possession when you were subpoenaed, and you did something other than bring them along with you without lawful excuse, you would be in contempt, in my judgment; and that's why it's pertinent.

We have asked that you bring certain records here, and you've stated that you do not have them with you, and we want to know whether it's because you did not have them and could not bring them, or whether it's because you simply didn't bring them?

A. Well, it's because I do not have them.

Q. And do I understand that to mean you haven't had them since you were subpoenaed under the subpoena that you are now here under?

A. I have not had them, sir.

Q. Are you presently a member of the NAACP?

A. Well, now, is that pertinent to the issue, sir?

Q. It is.

Did you hear the opening statement that the Chairman [Vol. 97] read this morning?

A. Yes sir.

Q. We want to find out if you are a member of the NAACP for the purpose of asking you certain questions concerning certain individuals on whom we have certain information indicating that they are or have been members of the Communist Party of Florida, and we want to find out if you are or have been a member of the NAACP, and whether you know those people in the NAACP?

A. Counsel, I think that to answer the question would certainly violate my rights to privacy, to affiliation and association, and would prohibit individuals with whom I would want to associate to bring about certain comforts for my people through certain rights which would be given to us, and if I were to answer that question, I'm afraid that would be a violation of my rights which would be guaranteed to me under the Constitution.

Q. You decline, then, to answer whether you are now a member of the NAACP?

A. Well, before I would enter any declaration, I have a statement that I think would give you the basis of my declaration; I think that that would give an intelligence to the [Vol. 98] Committee that would be of great benefit in terms of—

Q. You want me to examine that statement?

A. Well, if you can read my writing.

Mr. Strickland: Is that a reason?

The Witness: Well, it's longer than a sermon, sir.

Mr. Hawes: Counsel, in order to save time, this seems to be in the nature of a legal objection to the—

Mr. Simon: There are five grounds which have been stated, I hope, succinctly as possible, Counsel.

I'm as much interested in saving the time of the Committee as I am my own.

Representative O'Neill: Is that drafted by Counsel?

Mr. Simon: We have, the three of us, worked together with regard to them.

Mr. Hawes: As I understand you, Counsel, this is the five grounds which you conceive to be your legal grounds for your client's refusal to answer that question that was just propounded to him?

Mr. Simon: Sir, I believe that both the law and the [fol. 99] rules of this Committee require that the witness state his own objections.

Mr. Hawes: Yes. That's what I was getting at.

You conceive these reasons set out on these pieces of paper to be his legal grounds for declining to answer that question, and—

Mr. Simon: I believe that they would form, if the witness were to use those objections, I believe they would form a legitimate, legal basis for refusal to answer the question.

Mr. Hawes: That's what I was getting at.

Well, Mr. Chairman, if that's what he desires to do, is to state a legal objection to the question, I think it is proper, as long as he doesn't get off beyond legal—stating legal objections.

The Chairman: All right, proceed, and if you feel it's out of line, why, call it to my attention.

The Witness: I wish to enter this statement which has [fol. 100] been prepared.

By Mr. Hawes:

Q. We have had so much colloquy here, Reverend; let me again propound the question, so the record will be clear.

Are you presently a member of the NAACP in Dade County, Florida?

A. Before I answer that question, I would like to enter a statement which you have seen—

Q. Well—

A. -- for the record.

Q. -- are you going to answer the question? If you're going to answer the question, it's not proper to read the objection.

A. (After conferring with counsel) I'm not going to answer the question, I respectfully submit, and I'll give you the reasons now why I can't answer it.

Q. All right.

A: The Committee is not properly constituted by law to require that I involuntarily answer any questions.

The Act creating this Committee does not define the limits of the Committee's scope of inquiry, and purports to vest in you so broad a power of inquiry as to make your [fol. 101] very existence illegal, to say nothing of your power of interrogation.

The effort of your Chairman and you, Counsel, to limit the scope of inquiry is not only unwarranted and illegal, but is further, ineffective, since it is merely repetitions of the terms of the Act.

I have been and I remain unable to ascertain the objectives of the Committee, as defined by the Act of the Legislature creating the Committee, and am unable to translate the statements made by the Chairman and Counsel into any form which permits me to determine whether these questions, or any questions you will hereafter ask me is within the scope and bounds and legitimate--of legitimate inquiry on the part of the Committee.

In addition, insofar as I'm able to ascertain from your statements, you seek to discover whether there has been a subversive infiltration into the NAACP or other similar organizations. It is my opinion that you have no right to inquire into the question of subversion or subversive activities, since you are a Committee of the State Legislature, and this power has been prompted by the Government of the United States.

[fol. 102] Your inquiries are not a proper function of the Committee of the State Legislature. The Act creating the Committee purports to permit you to investigate violations of the laws of the State, whereby you become, in essence, a Grand Jury. This is a function of the executive and the judicial branches of Government, but certainly, it is not a function of the Legislature.



The questions seek to inquire into my beliefs, affiliations and associations; this I believe you cannot do. This power has not been granted to you by the Legislature, nor could the Legislature have required me to involuntarily divulge my beliefs, affiliations and associations.

This would be an invasion of my rights, as guaranteed to me by the First and the Fourteenth Amendments to the U. S.—United States Constitution, and Sections 12, 13 and 15 of the Declaration of Rights of the Florida Constitution.

My refusal to answer does not stem from my desire to prevent you from abusing a Constitutional right. I am well aware of the serious consequences which will result if I should be required to reveal my associations publicly. Until now, I may have been suspected that I had been associated with or had been a member of the NAACP, but this suspicion alone has been sufficient in the past to cause crosses to be burned on my lawn in front of my house, and my wife has been threatened, and I have been plagued with false charges; my church was threatened to be blown up, and continued harassments by telephone calls night after night for weeks.

I have very good reasons to believe that should I publicly reveal membership in the NAACP, or any other organization whose views on the question of desegregation do not match yours and the majority of organizations whose views on the question of desegregation do not match yours and the majority of the people in the State, that there would be a recurrence of these threats to me, to my family, to my church and to my parishioners.

The recent events of Little Rock and Montgomery and in other places would have its counterpart in Miami. Were I to reveal the names of persons whom I can identify as members of the NAACP, the consequences to these persons would be disastrous, and it would include loss of jobs, threats of physical harm and reprisals, cross burnings and bomb threats and economic reprisals.

Lastly, the organization of the State NAACP would be [foi: 104] completely destroyed. Membership in a minority group organization itself is an act of courage, particularly in the South is this true, even when the member is not required to be subjected to public exposure.

It is not hard to predict, therefore, that should members in the NAACP be exposed to harassment of government bodies such as this, and to public hatred and threats of physical harm and economic reprisal, that old memberships will quickly lapse, new memberships will be non-existent, and the organization itself may become an empty shell.

I believe this is the goal of those persons setting up this Committee. Fortunately, our Constitution does not require that public exposure become the price of associating and of belief.

Q. Is that the end of your statement, Reverend?

A. That's right.

Q. That is your ground for declining to answer the question that I asked you, about whether you're personally a member of the NAACP?

A. Yes, Counsel.

Q. Now, Reverend, and Counsel, if it's agreeable, in order to save time, the other questions that I propound, where [fol. 105] you seek to decline on those same grounds, you can just state that "I decline on the same grounds."

Is that agreeable to Counsel?

Mr. Dixon: With one exception, Counsel, that if there's any objections as to relevancy that do not fall into the following category, we will so ask the witness to include that particular objection.

Mr. Hawes: All right.

Well, I believe your objections cover the grounds of pertinency and relevancy there, doesn't it?

Mr. Simon: As a general proposition, but in many cases, it may not cover a specific question.

By Mr. Hawes:

Q. All right, Reverend, now, do you know, or have you, in the past five or six years, known a person named Augusta Birnberg, of Dade County, to be a member of the NAACP in Dade County?

A. (After conferring with counsel) Counsel, will you state the relevancy of that?

Q. Now, Reverend, the testimony and evidence before the Committee indicates that this individual, Augusta Birn- [fol. 106] berg, is or has been a member of the Communist

Party League in Dade County, and we also have information indicating that she was either a member of, or participated in meetings of the NAACP, or might have, in Dade County, and the purpose of the question, and the relevancy of the question, is to determine whether or not she was, in fact, either a member of or associated with or participated in NAACP meetings, to your knowledge.

A. (After conferring with counsel) On the question, I decline to answer it on the basis of the statement which we have read, and on the fact that I—I did not hear the statement to which you refer that is in the record.

I believe that my lawyers have heard it, but then, to me, it becomes hearsay evidence.

Q. In other words, you decline on the same ground, and on the further ground that my efforts to demonstrate the pertinency of the question to you are hearsay, as far as you are concerned, is that correct?

A. (After conferring with counsel) I think your statement is correct, Counsel, but the question, in my mind, is the proof itself.

Q. In other words, you are going to be the judge of the [fol. 107] sufficiency of the evidence to prove the grounds of pertinency that I have just stated to you. Is that your position?

Mr. Simon: Counsel, if I may, I think that calls for a legal conclusion.

I am willing to state for the record that it is the opinion of the witness, as he and I have discussed it with other counsel, that the proof that has been placed in this record, which has not been heard by the witness, was heard by his counsel, is not sufficient to meet the standards of proof required by the Supreme Court of Florida in the case which you have cited from earlier in the proceedings.

Mr. Hawes: You decline, then, on—

Mr. Simon: The witness declines if you'll accept the grounds which I have set forth.

Mr. Hawes: Yes sir.

By Mr. Hawes:

Q. Now, Reverend, I ask you if you do now, or have in the past, known a man named Edward Waller, as a member [fol. 108] of the NAACP in Dade County, and I state to you that the grounds of relevancy and pertinency in the case of this question pertaining to Edward Waller are the same as those grounds that I just stated to you in connection with the witness—or the person, Augusta Birnberg.

Have you known or do you now know Edward Waller to be or to have been a member of the NAACP in Dade County?

A. (After conferring with counsel) Counsel, in the interests of time, I think we can say that in the identifying of all persons that you will ask me, our answer will be the same, that we deny, refuse to identify them on those grounds.

Q. You decline to answer that on the same grounds you just stated?

A. On the previous question.

Q. Now, I'll state, in regard to the person, Walker, that I inquired about, that the record shows that he is admittedly a past member of the Communist Party, and I ask again if you will tell me whether you ever knew that man to be a member of the NAACP?

A. (After conferring with counsel) In light of the previous question, we say again that the record, so far as I know, does not contain this. I've only heard this from—

[J. 109] Q. You decline to answer the question?

A. Decline to answer on that basis.

Q. Now, Reverend, in order to save time, if this is agreeable to you and your counsel, I'm now going to ask you if you knew a number of persons that I am going to include in one question, and I'll state to you in advance that the grounds of pertinency and relevancy as to each of these persons I am going to name in this question are the same as those that I have stated, as to the person, Augusta Birnberg, that I asked you about. That is to say that we have testimony and information and other evidence that these individuals are or have been members of the Communist Party and were or may have been members of the

NAACP or participated in meetings of the NAACP in Dade County.

Now, that statement applies to the following people:

Did you know James Nimmo, Abe Sorkin, Charles Marks, Myron Marks, Leo Sheiner, Charles Smolikoff, Tess Kantor, Leah Adler Benomovsky, Louis Poppo, Manny Graff, Bobbie Graff or Michael Shantzek, or any of them to be members of the NAACP in Dade County?

[fol. 110] A. (After conferring with counsel) Counsel, I will not answer on the grounds of the statement which is already in the record, and because what has been said isn't sufficient to prove that these individuals are what and who you say they are.

Mr. Hawes: Mr. Chairman, I ask that the witness be instructed to answer the last series of questions propounded to him concerning these individuals that I have asked him if he knew to be members of the NAACP.

The Chairman: The witness will answer the question.)

The Witness: Mr. Chairman, the very fact that Counsel says this of these individuals, this is not conclusive proof to me, as a witness, that they are. I have not seen the proof that they are Communists or that they are members of the NAACP.

How, then, can I enter the testimony, or the answer, to the effect that they are. I can't.

[fol. 111] By Mr. Hawes:

Q. Are you declining to answer under the Chairman's order to answer, Reverend?

A. (After conferring with counsel) I must decline to answer even after the instruction of the Chairman, on the grounds that were previously stated.

Mr. Hawes: All right, Reverend, you can come down—before you come down, just a minute, please.

Representative O'Neill: I'd like to make a motion.

The Chairman: Motion?

Representative O'Neill: A motion that the Reverend Edward T. Graham be cited for contempt by this Committee, and that counsel for the Committee be instructed to file the necessary petition in the appropriate Circuit

Court to hold the said Reverend Edward T. Graham in contempt of the Committee, to answer the lawful questions of the Committee which have been set forth and propounded.

The Chairman: Is there a second to the motion?

[fol. 112] Senator Hair: Second the motion.

The Chairman: You've heard the motion—

Mr. Simon: Mr. Chairman, before there's a vote, I resent the statement that this man is in contempt of the Committee.

This Committee, under the statute and under the rules, does not have the right to say this man is in contempt of this Committee.

Now, of course, the way you vote on it is perfectly all right, but I think your counsel will advise you that if a court orders him to answer, that's one thing. You can go to the court and ask the court to do it, but he is not in contempt of this Committee and has done nothing to be in contempt of this Committee.

Mr. Hawes: I think the witness is in contempt of this Committee, counsel, and I think, in addition to the—

[fol. 113] Representative O'Neill: The motion says—

Mr. Hawes:—ability of this Committee to invoke the aid of the Circuit Courts on that proceeding, that the Legislature itself, on the record made here, could punish this witness for contempt of this Committee record right now made.

The Chairman: You've heard the motion. Is there a second?

Senator Hair: I seconded it.

The Chairman: It's been moved and seconded that the witness, Reverend Graham, be cited for contempt before the Committee, and that counsel be instructed to prepare the necessary proceedings before the Courts.

All in favor of the motion signify by saying "aye."

(All Committee members voted "aye")

The Chairman: Opposed.

(No response)

The Chairman: Senator Johns, did you hear the motion?

[fol. 114] Senator Johns: Aye.

The Chairman: It's the unanimous vote of the Committee.

Mr. Dixon: Is the witness excused, Gentlemen?

Mr. Hawes: He is for now.

Mr. Dixon: Well, you mean you're going to call him back?

Mr. Hawes: I anticipate that I'm going to want to call him back.

Mr. Dixon: This evening or tomorrow?

Mr. Hawes: I think it will be tomorrow.

Mr. Dixon: Can he be excused for the day?

Mr. Hawes: I think he can be—let's see—

The Chairman: Yes, excuse any of them we can for the day.

Mr. Hawes: And if it will be any convenience to—who was the other witness? We've only had—

Mr. Simon: Mr. Stiller; you haven't called Mr. Stiller. [fol. 115] Mr. Hawes: If it will be any convenience, Counsel, to Mr. and Mrs. Stiller and Reverend Gibson at this time, they can be excused until in the morning at—what time, Mr. Chairman?

The Chairman: 9 o'clock.

Mr. Ramer: Counsel, what of my client, Mr. Sorkin?

Mr. Hawes: That same will apply to him.

Mr. Simon: Is Your Honor requiring them to be back—

The Chairman: At 9 o'clock tomorrow morning.

Mr. Simon: Mrs. Stiller has a little baby at home, eighteen months old, has a baby sitter.

Now, if you're going to call her, of course, that's all right.

Mr. Hawes: Maybe I can accommodate you on her. I'll let you know in just a minute.

Mr. Simon: I'll appreciate it, Counsel.

The Chairman: The hearings will be adjourned until [fol. 116] 9 a.m. tomorrow morning.

Mr. Carter: Mr. Chairman, the other witnesses that we represent, one of whom is Reverend Lowry, has a very important engagement, and if you're not going to call him, we'd like to know, or we'd like to make some arrangements so that he can come at some other time. He came here, as did Mrs. Perry, Mrs. Allury and Mr. Graves.



Now, if these people are not going to be called, we would like to be advised of that.

It's impossible for the Reverend Lowry to be here to-morrow.

The Chairman: You say it's impossible for him to be here tomorrow?

Mr. Carter: Yes, because he came away from an important engagement to come here today.

Mr. Reeves: He's engaged in some church work.

Mr. Carter: He wants to go back; he needs to go back. [fol. 117] Representative O'Neill: Could he be here to-morrow afternoon, Counsellor?

Mr. Reeves: He can speak for himself. He's right here.

Reverend Lowry: I'll try to be here.

Mr. Reeves: It would be very inconvenient, however.

Mr. Hawes: Well, whether a witness can be here or not, or whether he finds it inconvenient to be here or not, that is a different matter, Counsellor.

We want to accommodate you in every way we can, but I—it's not my wishes that I'm not in position to use that witness at this time.

Mr. Carter: I'll just say we're asking you to excuse him; we're not demanding it.

Here's the position—

The Chairman: We're going to do everything possible we can to close this thing up tomorrow, so that everybody can go. We're not here at our own convenience either, and we don't want to drag this thing on the rest of the [fol. 118] week and half of next week. We're going to do everything possible to try to wind this up tomorrow.

Mr. Reeves: Well, may I point out—

Mr. Carter: Let me point out to the Chairman that we've indicated to the Committee that Reverend Lowry has none of the records, is not custodian of any of the records that you desire.

Now, it would be a great convenience to him if you would ask him, if you want to call him, and we could possibly finish with him, if needed. It would be most convenient, so that he would be able to keep his engagement.

Mr. Hawes: Just a minute. Maybe we can accommodate you on that.

Representative O'Neill: The same would be true of Mrs. Perry and Mrs. Albany.

The Chairman: Counsellor, wouldn't the same be true of everyone that's here? I mean, everybody wants to go home—

Mr. Reeves: Only on this question, if it's the question [fol. 119] of whether or not they have these records—

Mr. Hawes: That's not the only question, though.

Representative O'Neill: Let me ask this: Would he be available tomorrow afternoon, sir, at 1 or 1:30?

Mr. Carter: Reverend Lowry has to go to Tampa.

Representative O'Neill: He could fly down and fly back.

Mr. Reeves: Will the Committee pay the \$49—

Senator Johns: Gentlemen, I thought the Committee had been adjourned.

The Chairman: Well, we're trying to get—accommodate Counsel here.

Mr. Hawes: I don't think we can accommodate all these people; I just don't see how we can do it.

Mr. Carter: I'm asking particularly with reference to Reverend Lowry.

The Chairman: Well, Counsellor, this attorney here has made a special request for two of his clients too, and they've [fol. 120] got a real problem, and we'd like to accommodate them.

Mr. Simon: Mr. Herrell, the point is this, that they have made arrangements to have their baby taken care of; it's an eighteen-months-old-baby, and we are prepared to stay here till tomorrow. I want the Committee to understand that. We're prepared to stay here, if necessary. The only question was, Mrs. Stiller has testified.

If the—if counsel is not going to call her back again, and if they're not going to call Mr. Stiller, then I would like to have them excused. If you're going to have them, if you're going to ask them more questions, then I have no request to make. My only request is to find out whether they're going to be needed. I hate to have them inconvenienced, and the child too.

The Chairman: I appreciate that.

Mr. Hawes: Counsel, I appreciate the position that you're in there. I can state this now: I'm certain we won't call

[fol. 121] Mrs. Stiller back, if it would be any convenience for her to be able to go home. I do not know about Mr. Stiller at this time.

Mr. Simon: All right. Then, Mrs. Stiller is excused, and I'll—

Mr. Hawes: If it will be of any convenience to her to go on home to her baby, why, we won't call her back.

Mr. Simon: Fine. Thank you, sir.

Mr. Hawes: I don't see how we can accommodate all these people.

Mr. Carter: I'm only asking about one, and that's because of the importance of his work.

The Chairman: We're not going to excuse anyone else from under the subpoena. We have excused Mrs. Stiller from further questioning.

The meeting is now adjourned.

(Whereupon, at 4:30 o'clock, p.m., the hearing was adjourned until tomorrow, Thursday, November 5, 1959, beginning at 9 o'clock, a.m.)

[fol. 123]

BEFORE THE FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE  
Committee Room No. 50  
STATE CAPITOL BUILDING  
Tallahassee, Florida

**Transcript of Testimony of November 5, 1959**

**APPEARANCES:**

Representative W. Cliff Herrell, Chairman, presiding;

Senator H. H. Hair, Member;

Senator W. Randolph Hodges, Member;

Representative William G. O'Neill, Member;

(Not present at beginning of hearing)

Mark R. Hawes, Esq., Chief Counsel for the Committee;

R. J. Strickland, Investigator for the Committee.

[fol. 125]

## PROCEEDINGS

(The Committee met at 9 o'clock, a.m.)

The Chairman: The hearing is called to order.

Will you call the roll?

Mr. Hawes: Sergeant, will you go to the door of the witness room and see what witnesses are here?

Mr. Strickland: Vernell P. Albury.

(No response)

Mr. Strickland: G. E. Graves.

(No response)

Mr. Strickland: Reverend A. Leon Lowry.

(No response)

Mr. Reeves: Mr. Reverend Lowry, Mr. Chairman, will not be present, sir.

I would like to state for the record that Reverend Lowry appeared under the subpoena yesterday, was available, of course, all day. He had an important engagement which was over a year's standing, as the Dean of an institute of [fol. 126] his church in which he was the only person who could carry forward in that capacity.

He had sat up all night, took a bus out—the institute began on Monday. He took a bus out, sat up all night, in order to be here; got here at 4 o'clock yesterday morning, in order to be available yesterday, and of course, for administrative reasons, whatever they may be, the Committee was unable to proceed during the entire day with the hearings. As a consequence, he had to leave last night, and he indicated, or asked us to indicate, of course, that he will cooperate at any other time the Committee will call him or want him.

He authorized us also to repeat the statement which he made yesterday, namely, that he does not have any records of those subpoenaed by the Committee.

Mr. Hawes: Continue with the roll call.

Mr. Strickland: Ruth Perry.

[fol. 127] Ruth Perry: Present.

Mr. Strickland: Abe Sorkin.

Abu Sorkin: Present.

Mr. Strickland: Richard Stiller.

Richard Stiller: Present.

Mr. Strickland: Arlington Sands.

Arlington Sands: Present.

Mr. Strickland: Mrs. Stiller was excused, wasn't she?

Mr. Hawes: That's correct.

Will all the witnesses except Arlington Sands retire to the witness room, please?

(All the witnesses except Arlington Sands left the hearing room)

Mr. Hawes: Where is—

Mr. Reeves: Mr. Graves, I assume, is on his way.

Mr. Hawes: He intends to be here?

Mr. Carter: Oh, yes.

The Chairman: Does the Committee want to take any action on the absence of Reverend Lowry, who was advised by the Chair, when the appeal was made for his absence yesterday, he was advised by the Chair that it would [fol. 128] be essential that he be here today under subpoena.

Senator Hodges: Mr. Chairman, I move you, sir, that the Counsel for the Committee be instructed to draw up the necessary resolution to be adopted by this Committee, recommending that the 1961 Session of the Legislature take appropriate action in the punishment of Reverend Lowry for ignoring the subpoena of this Committee.

Senator Hair: I second the motion.

The Chairman: It's been moved and seconded that Counsel for this Committee be instructed to draft a resolution, to be adopted by this Committee and presented to the 1961 Legislature, calling for contempt of Reverend Lowry before the Legislature for his refusal to honor the subpoena issued by this Committee.

I'd like to call the roll on this.

Randolph Hodges.

Senator Hodges: Aye.

The Chairman: Horry Hair.

Senator Hair: Aye.

[fol. 129] The Chairman: And I vote "aye."

(The vote was unanimous)

Thereupon, ARLINGTON SANDS, having been called and duly sworn as a witness, was interrogated and testified as follows:

Examination.

By Mr. Hawes:

Q. Please state your full name.

A. Arlington J. Sands.

Q. Where do you live?

A. Miami.

Q. Miami, Florida?

A. Yes sir.

Q. How long have you lived down there?

A. All my life.

Q. You are a member of the NAACP?

A. Yes.

Q. You are now, presently?

A. I think so.

Q. What do you mean by—that you think so?

A. Well, I'm not sure whether my membership has expired or not.

Q. You were a member last year, and you still are, unless [fol. 139] your membership has expired?

A. That's correct.

Q. All right. How long have you been a member of the NAACP?

A. Well, off and on for—I can't—off and on in the past, oh, ten years, probably, off and on.

Q. I show you a picture of a man and ask if you recognize that man?

A. Yes, I recognize him.

Q. Who is that man?

A. I don't recall his name, but I recognize him.

Q. You recognize the man in that photograph?

A. Definitely so, yes.

Q. Have you ever seen him at an NAACP meeting in Dade County?

A. I don't think I have.

Q. How's that?

A. I don't think I have.



Q. Are you sure?

A. Well, actually, I haven't been in any NAACP meeting in about two years.

Q. Have you ever held any office in the NAACP?

[fol. 131] A. Yes, oh, maybe five, eight years ago.

Q. What office was that?

A. Vice-president; even longer than eight years.

Q. Now, I want you to take a minute and see if you can remember when—what year you were vice-president down there?

A. I—it hasn't been in the fifties; so, it has been previous to '49.

Q. Weren't you a vice-president after 1950 down there?

A. I doubt seriously.

Q. Did you ever see this man depicted by this photograph at any kind of a meeting?

A. Yes, I've seen him to meetings, different meetings.

Q. Have you seen him at a meeting of the FDR Club down there?

A. I could have seen him there.

Q. You were a member of the FDR Club, once, weren't you?

A. Right.

Q. Did you see him—do you know a man named Michael Shantzek?

A. Michael Shantzek? I don't know that I do or not. I [fol. 132] might could—there was a fellow I thought was Mike something; I don't know his last name.

Q. That's Michael Shantzek there, isn't it (Indicating a photograph)?

A. Yes sir, that's probably him.

Q. Isn't that him?

A. Yes, I guess that's him. I don't know his full name. I never did know his full name; all I remember is Mike, or something.

Q. That's the man you knew as "Mike"?

A. Yes sir.

Q. And you don't know if you ever saw him at any NAACP meeting?

A. I can't recall of ever seeing him over there.

Q. But you've seen him in other meetings?



A. I saw him in regular, other meetings, but where they've been, what meetings, I don't recall either.

Q. How about this woman in this photograph? Do you recall her?

A. Yes, I recall seeing her.

Q. When did you see her?

A. I remember seeing her the early part of—sometime [fol. 133] during the fifties, at the FDR Club.

Q. The FDR Club?

A. FDR Club.

Q. See her at any NAACP meetings?

A. No, I don't recall seeing her there.

Q. What other kind of meetings did you see that woman at?

A. Civil Rights Congress, I think it was. I remember seeing her, probably, there. I think she was in there.

Q. Who is that woman?

A. I don't know her name, but I know her face.

Mr. Hawes: Let the record show that photograph is one of Leah Benomovsky.

Mr. Simon: Mr. Hawes, could we ask to have it identified with a number?

Mr. Hawes: I will, a little later, identify all these pictures.

Mr. Simon: Well, for the purpose of tying it into the testimony of the witness.

Mr. Hawes: Counsel, I'm going to have them all numbered [fol. 134] a little later, but we aren't going to have but one photograph of Leah Benomovsky in this record; won't be any confusion over it, I'm sure.

By Mr. Hawes:

Q. Do you recognize the man in this photograph here?

A. Yes.

Q. What?

A. Yes.

Q. Have you seen him at any meetings?

A. I have seen him at meetings from time to time.

Q. FDR Club?

A. FDR Club, Civil Rights Congress—I don't know.

Q. NAACP?

A. Well, I'm not sure he's a member of the NAACP. I haven't—he could have been there after my time; I can't say.

Q. After your time? What do you mean by after your time?

A. After—sometime after 1949, say, after 1949. [fol. 135]

Q. You know who that man is, don't you?

A. I've seen him; Myron Marks. I know him well.

Q. You know him well?

A. Know him well.

Q. Didn't he help you distribute some literature one time for the NAACP?

A. No. I don't happen to recall distributing any kind of literature for the NAACP.

Q. He didn't distribute any for you?

A. No, positively not.

Q. Did you know his father?

A. I know his father when I see him.

Q. Have you seen him at any meetings?

A. No, I haven't seen him at meetings.

Q. But Myron Marks, you've seen at the FDR Club?

A. Yes, FDR Club. I've been a member of the FDR Club; so that's where I probably—I think I first met him at that place.

Q. What other kind of meetings have you seen him at?

A. Well, I think he was a member of the Civil Rights Congress. I was also a member.

Q. Civil Rights Congress?

[fol. 136] A. Yes sir.

Q. What about the man in this photograph here? Do you recognize him?

A. Yes I—yes, that's Charlie Smolikoff.

Q. Charlie Smolikoff?

A. Uh huh.

Q. Did you see him at any meetings?

A. No, I haven't seen him at any meetings.

Q. You never saw him at the FDR Club?

A. I don't even recall whether he was to the FDR Club meetings or not. I know that—I know him quite well, regarded him as a friend.

Q. You know him quite well?

A. Yes.

Q. When is the last time you saw him?

A. I don't know when the last time I saw him; that must have been—I can't say that. It's been later than five years ago, anyway.

Q. Did that man ever make a speech to the NAACP at the Youth Center, that you can remember?

A. No, I can't recall. He wasn't sitting at those type of events. As I remember, he didn't think too much of the NAACP.

Q. You discussed it with him?

[fol. 137] A. Well, we discussed it.

Q. That man was—he was a member of the FDR Club, wasn't he?

A. Yes, he probably was the founder of it.

Q. He was the founder of it, in fact, wasn't he?

A. Probably was.

Q. Don't you know that he was?

A. Well, I'm not stating that he was, but I remember he talked to me about it before it came about.

Q. That man was a Communist, and he founded the FDR Club for the Communist Party; isn't that true?

A. Well, when he founded that, he—I didn't think they have a Communist—didn't have a Communist Party here.

Q. The FDR Club was the Communist Party in Dade County when it was founded, wasn't it?

A. Well, I'm not certain of that.

He told me that they didn't have—they didn't have no organization here, and they needed an organization of that sort, the FDR Club, and that's why he was trying to organize one.

Q. That's right. They had disbanded the Communist Party, and in its place they organized the FDR Club in Miami, didn't they?

[fol. 138] A. Well, I can't say with any certainty, because there was a lot of people in there that didn't have Communist tendencies.

Q. Well, wasn't that same man a member of the Southern Conference for Human Welfare with you?

A. He could have been.

Q. You were a member of that organization?

A. Yes, I was a member of that.

Q. Well, that was an outright Communist organization, wasn't it?

A. I couldn't say that.

Q. Didn't that same man help organize that organization?

A. Well, I couldn't say he helped organize it, because I remember some fellow came down from Orlando and organized the Southern Conference.

Q. In Miami?

A. Yes, that's right.

Q. Do you know who that fellow was?

A. No, I don't remember his name. All I remember is, he was a tall fellow.

I did know his name, but I can't recall it now.

Q. How about the man in this photograph here? Do you recognize him?

[fol. 139] A. Yes, that's Leo Sheiner.

Q. Leo Sheiner.

Now, have you ever seen him in any meetings?

A. Yes, I have seen him in meetings.

Q. Of the FDR Club?

A. Well, I don't know whether he was here during the FDR Club time.

Q. What meetings have you seen him at?

A. Well, I've seen him at NAACP meetings.

Q. NAACP meetings?

A. (The witness nodded affirmatively)

Q. Have you seen him in the Southern Conference for Human Welfare meetings?

A. Well, I'm not sure. I don't remember what time he was here, whether he was here during that time.

Q. You've seen him at other meetings besides NAACP meetings, haven't you?

A. Well, I don't—I'm not sure.

Q. That man was a lawyer, wasn't he, when you knew him?

A. He was a lawyer, that's right.

Q. Did he ever represent the NAACP while you were an official of the NAACP?

[fol. 140] A. Yes, he represented us in a murder case.

Q. That was in Miami?

A. That was in Miami. He did.

Q. Did you know that he was a Communist?

A. No, I don't even think he's a Communist.

Q. You don't think he is?

A. No.

Q. You had no information on it, and you don't think he is?

A. No, I don't think he is.

Q. Do you know the man in the middle of that photograph?

A. Yes.

Q. Who is that man?

A. That's Leo—I don't know his last name. I know his name, but I can't think of it right now.

Q. Is that Abe Sorkin?

A. Abe Sorkin.

Q. Have you ever seen him in any meetings?

A. I've seen him at some meetings.

Q. What kind of meetings?

A. I don't recall, now, what kind of meetings, and where they was at.

Q. FDR Club meetings?

[fol. 141] A. Could have been, but I'm not sure what.

Q. How about the NAACP? Have you seen him in those?

A. I've seen him, I think, in NAACP meetings.

Q. Didn't you know him to be a member of the NAACP?

A. I don't know whether he was or not.

Q. But you've seen him at the meetings?

A. I've seen him at the meetings.

Q. You knew James Nimmo, didn't you?

A. Yes, I know James Nimmo well.

Q. Did you see him at NAACP meetings?

A. He probably could have been to some. Most likely, he's been there.

I can't recall that I've seen him or not, but I've seen him at so many different meetings.

Q. You saw him in meetings of the FDR Club?

A. Yes, I've seen him—I saw him at the FDR Club. He was interested in all types of civic organizations.

Q. You saw him in the Civil Rights Congress?

A. Saw him in the Civil Rights Congress.

Q. And in the Southern Conference for Human Welfare?

[fol. 142] A. Yes, I think so.

Q. Did you know this man?

A. Yes, I remember his face.

Q. Ever see him—

A. That's Ed Waller.

Q. That's who?

A. Ed Waller.

Q. Have you seen him at any NAACP meetings?

A. No, I haven't seen him there.

Q. What kind of meetings did you see him at?

A. The only time I ever remember seeing him at any meeting was at lay meetings and some other kind of meetings, when he was running for City Commissioner.

Q. Do you know the woman in this photograph?

A. Yes, I know her face.

Q. What kind of meetings have you seen her in?

A. Truly, I don't think, but I can't recall whatever meetings I have seen her at, and how many times, or whether—

Q. Did you see Mr. Strickland here in Miami last Wednesday?

A. Yes, I saw him last Wednesday.

[fol. 143] Q. Did you see that photograph last Wednesday?

A. I saw that photograph last Wednesday, because I remember him telling me who that person was.

Q. And you recognized her picture?

A. I recognized her face.

Q. Her face?

A. Yes.

Q. Didn't you tell him that you had seen her in some meetings?

A. If I recognize her face, I had to see her in some meetings. I never would have seen her otherwise.

Q. Didn't you tell him that you had recognized that woman as a person you had seen in NAACP meetings in Miami?



A. I couldn't possibly have said that.

Q. You didn't say that?

A. Unh unh. I didn't say I recognized her in some meetings, because he told me—I don't remember who he said—I don't even remember who he said—oh, yes, she was, oh, this fellow's wife here.

Q. Let me have that photograph.

That's Augusta Birnberg, isn't it?

[fol. 144] A. I don't know her name.

Q. Well, is that what he told you?

A. I think he told me that was—somebody's wife.

Q. That's what you think?

A. Yes, that's what I think.

Q. Of course, he didn't tell you that you recognized her features; you're the one that recognized the features?

A. Yes, I recognized her features, definitely.

Q. You didn't tell him, then, that you had seen this woman in an NAACP meeting?

A. No, but I—because I couldn't possibly have seen her in any NAACP meeting.

Q. Didn't you tell him that you had seen Ed Waller in NAACP meetings?

A. Unh unh.

Q. You did not?

A. No.

Q. You say, now, that you saw Lee Sheiner, though?

A. Oh, yes. He was there at my invitation; I had to remember him.

Q. How about Abe Sorkin?

[fol. 145] A. I don't recall Abe Sorkin being there.

You must remember, this has been more than two years since I've attended any NAACP meeting, and I have—

Q. Did you tell Mr. Strickland that you remembered seeing Abe Sorkin in NAACP meetings last Wednesday?

A. I remember seeing him in a number of meetings. Now, whether they was NAACP—

Q. Listen to my question:

Did you tell Mr. Strickland that you remembered seeing him in an NAACP meeting last Wednesday?

A. No, I couldn't possibly have said that.

Q. You could not have said it?

A. No.



Q. You couldn't possibly have said that?

A. No.

Q. Did you tell Mr. Strickland last Wednesday that you saw Charles Smolikoff at NAACP meetings?

A. Positively not.

Q. You did not?

A. (The witness nodded negatively)

Q. How about Myron Marks? Did you tell him that about Myron Marks last Wednesday?

[fol. 146] A. Well, I don't recall where I've seen Myron. I've seen him at a number of other meetings, and I don't recall.

Q. Did you tell Mr. Strickland you saw Myron Marks at NAACP meetings last Wednesday?

A. No, I didn't. I couldn't say I positively saw him there.

Q. Could not have said that?

A. I couldn't say that about any of these people here.

Q. That goes for this Benomovsky woman too?

A. Yes, it definitely goes.

Q. What about Mike Shantzek?

A. That goes for him too.

Q. You could not have told Mr. Strickland that last Wednesday?

A. No, I couldn't have said that.

Q. When did you get to Tallahassee?

A. Last night.

Q. Have you seen any member of the NAACP to talk to them since you've been in Tallahassee?

A. No. I just got here to this building here a short time ago. I didn't see anyone last night.

Q. Have you talked to anybody this morning about what [fol. 147] your testimony would be here?

A. Positively not.

Q. No mention of it at all?

A. Nobody.

Mr. Hawes: Mr. Chairman, I want this witness to stand aside.

The Chairman: Will you step down, but wait in the witness room.

Mr. Hawes: Take the stand, Strick.

The Chairman: Officer, will you show this witness where the witness room is.

(Witness excused)

Thereupon, R. J. STRICKLAND, having been heretofore duly sworn as a witness, was recalled, and testified further as follows:

Examination.

By Mr. Hawes:

Q. Mr. Strickland, you were sworn yesterday?

A. I was, sir.

Q. You realize you're still under oath?

A. I do, sir.

Q. Do you know the witness, Arlington Sands, that just [fol. 148] left this room?

A. I do, sir.

Q. Did you see him in Miami last Wednesday?

A. Yes sir. I had a conference with him last Wednesday morning in the Florida Highway Patrol station, located on Flagler Street, in Miami, Florida.

Q. Did you show him this photograph of Mike Shantzek?

A. I did, sir.

Q. What did he tell you, if anything, about Mike Shantzek, in relation to the NAACP on that occasion?

A. He said he knew Mike Shantzek was a member of the Communist Party and the painter's union, and had seen him possibly at two NAACP meetings.

Q. At possibly two. Was he positive that he had seen him at at least one?

A. No sir, he stated that he had possibly seen him at two.

Q. Those were his words?

A. Yes sir.

Q. What did he tell you about this woman, Leah Adler Benomovsky?

A. He couldn't remember this woman's name. He remembered her face; said she had attended many meetings where

[fol. 149] he was there, and that he had seen her at NAACP meetings.

Q. He was positive about that?

A. Yes sir.

Q. What, if anything, did he tell you about Myron Marks?

A. Myron Marks, he remembered very well; said he knew him as a staunch member of the Roosevelt Club, and that he had seen him at many meetings, and on one occasion this boy had delivered some materials for him.

Q. Did he say whether he had seen him at NAACP meetings or not?

A. Yes sir, and the materials, that—or the leaflets, it was, were put out, the NAACP leaflets, according to his statement.

Q. What did he say about that man, Charles Smolikoff?

A. He said he knew this man as head of the Communist Party in Miami, and had observed him at possibly two or three NAACP meetings; that he wasn't sure but he thought that that man made a talk to them one night.

Q. What did he tell you about Abe Sorkin, in regard to the NAACP?

[fol. 150] A. He said he knew Abe Sorkin to be a member of the NAACP at the time that he was holding office there.

Q. What did he tell you about Ed Waller at the NAACP?

A. He said that he knew Ed Waller as a member of the Communist Party, and that he had seen him at some of the NAACP meetings.

Q. What did that man tell you about this woman here, Augusta Birnberg?

A. He said he had seen Augusta Birnberg at many NAACP meetings and others, and knew her to be a member of the Communist Party.

Q. What about Leo Sheiner? What did that witness tell you in Miami last Wednesday?

A. He stated that Leo Sheiner had appeared at NAACP meetings, and had made a talk to them; that he had retained Leo Sheiner as lawyer for the NAACP to represent them in a case that had happened down in South Miami. Knowing that he was a Communist Party lawyer at the time, he retained him as counsel for the NAACP.

Mr. Hawes: Come down, sir—no, take the stand again.

[fol. 151]

By Mr. Hawes:

Q. Mr. Strickland, just where did you say this conversation took place?

A. In the Florida Highway Patrol station on Flagler Street, in Miami, Florida.

Q. And when, again?

A. If I remember correctly, it was last Wednesday morning, this past—yesterday morning was a week ago.

Q. Was anybody present at that time that that conversation between you and that witness took place?

A. There was not, no sir.

Q. Who was at the station, if anyone, at that time, do you remember?

A. Well, I suppose there was a hundred and fifty or two hundred people there, Counsellor. I don't know them. They were having driver's tests; they—all the patrolmen were in and out downstairs. We were in a private office upstairs, Room 206.

Q. Room 206?

A. That's correct, sir.

Mr. Hawes: Come down.

(Witness excused)

[fol. 152] Mr. Hawes: Call Vernell P. Albury.

The Bailiff: What's the name again?

Mr. Strickland: Albury, Vernell P. Albury.

(The following witness was represented by counsel, Frank D. Reeves, Robert L. Carter and G. E. Graves, Jr.)

Thereupon, VERNELL P. ALBURY, having been called and duly sworn as a witness, was interrogated and testified as follows:

Examination.

By Mr. Hawes:

Q. Please state your full name.

A. Vernell P. Albury.

The Chairman: Have her sit a little closer.

By Mr. Hawes:

Q. Sit just a little closer, please.

You live in Miami, Florida?

A. Yes, I do.

Q. Does your subpoena call for any books or records or membership lists of the NAACP?

[fol. 153] A. Yes, it does, if they were in my possession or custody.

Q. Did you have any?

A. No, I did not.

Q. And you have none with you now?

A. No, I don't.

Q. Are you a member of the NAACP?

A. Yes, I am.

Q. How long have you been?

A. Since March of '55.

Q. Have you held any office in the NAACP?

A. I am treasurer.

Q. You are now the treasurer?

A. Yes.

Q. In the Greater Miami branch?

A. Yes.

Q. Have you held any other offices?

A. No, I haven't.

Q. Did you know a woman named Augusta Birnberg in Miami?

A. No.

Q. That name is not familiar to you?

A. No, it isn't.

Q. Do you recognize the woman in that photograph there?

[fol. 154] A. No, I don't.

Q. You don't recognize her at all?

A. No.

Q. Did you know a man named James Nimmo?

A. Yes, I know James Nimmo.

Q. Did you ever see him at an NAACP meeting in Miami?

A. (After conferring with counsel) Would you explain to me the pertinency of the question as it relates to the inquiry?

Q. We have testimony that James Nimmo—first, I'll ask you, did you hear the opening statement that the Chairman read yesterday?

A. Yes, I heard it.

Q. You heard that?

A. Uh huh.

Q. We have evidence and testimony that shows James Nimmo was a member of the Communist Party, and we seek to determine from you whether or not, to your knowledge, he was a member of or participated in the meetings of the NAACP?

A. (After conferring with counsel) I have never seen James Nimmo at any NAACP meeting.

The Chairman: We can't hear her down here.

[fol. 155]

By Mr. Hawes:

Q. Would you speak a little louder, please.

A. I said, I have never seen James Nimmo at an NAACP meeting.

Q. Did you know—

A. I knew him, growing up around Miami.

Q. Do you know whether or not he was ever a member of the NAACP?

A. I do not know.

Q. What are your duties as treasurer of the NAACP?

A. To write checks whenever it's time to pay bills or anything of that sort.

Q. Is that all?

A. Yes.

Q. Don't you receive any money?

A. I—yes, I receive the money, but I receive the money to deposit in the bank.

Q. Who do you receive the money from?

A. I receive the money at the meetings, after—we take up the money at the meetings, is when I receive it.

Q. From the members?

A. No, not from the members, just from the collections that—on the table.

[fol. 156] The members doesn't give me anything, the members doesn't give me anything.



Q. You don't handle any of the dues of the members?

A. No, I just handle the money as it comes into the meetings.

Q. That's—I assume that's donations you're talking about?

A. Donations and memberships, but I don't take the memberships. I receive the lump sum of money to deposit in the bank.

Q. Well, don't you have to keep some record of who's paid their dues to you?

A. No, I don't have to do that.

Q. Well, how do you know who's paid their dues and who hasn't?

A. We don't keep records like that, of who's paid dues. You pay dues once a year, just like if I ask you to become a member of the NAACP.

(Laughter in the hearing room)

By Mr. Hawes:

Q. Well, you wouldn't—if I was kind enough to give you money for dues, you wouldn't make any record of it at all?

A. The only thing I would do, on the envelope that we [fol. 157] have, I would give you the receipt.

Q. And you have no—

A. Any member of the NAACP can ask you, or anybody else to join.

Q. But you have no record, as treasurer, as to who you collect the dues from?

A. No, I don't.

Q. Well, you have, do you not, deposit slips? You deposit that money—

A. Yes, I have deposit slips.

Q. Don't you take some of the dues in checks, in the form of checks?

A. Yes. We write—make deposits, and put that on deposit slips and send it to the bank.

Q. Don't you put the name of the member that wrote that check on your deposit slip?

A. Yes, if it's—if it comes in a check, you put that on the deposit slip.



Q. You put the member's name that wrote the check on the deposit slip?

A. If a member—a lot of times members—you put that money in an envelope.

Q. Listen to me carefully.

A. Yes.

Q. A member pays their dues to you as treasurer in the [fol. 158] form of a check, gives you a check for his dues.

A. Yes.

Q. You make the deposit slip?

A. Yes.

Q. Don't you write the member's name on that deposit slip?

A. Sometimes I do and sometimes I don't.

Sometimes I just write the bank number, just like the bank number is 63-275 or 63-491, and I put the amount on the other side.

Q. Don't you have in your possession some deposit slips with the names of some members of the NAACP who have given you checks for their dues?

A. I don't know. I might have, and I might not.

Q. You haven't checked to see whether you had or not?

A. No.

Q. Then you don't really know whether you have in your possession any records that might indicate anybody's membership in the NAACP or not?

A. No.

(The witness consulted with counsel.)

Mr. Carter: The subpoena which was issued out of the [fol. 159] Committee called for membership lists.

I think—

Mr. Hawes: I'm sending for the subpoena right now. We'll see just exactly what it says.

Mr. Carter: Well, she has the subpoena here. It didn't call for deposit slips or anything of that kind.

Mr. Reeves: May I read it?

Mr. Hawes: Yes.

Mr. Reeves: The subpoena reads, that portion which is pertinent to the record:

"Said witness to bring with him the following books and records and membership lists, pertaining to identity of members and those paying dues, local chapter of State Conference Organization of National Association for the Advancement of Colored People, in his possession, of which he is custodian."

Mr. Hawes: That's right.

Mr. Reeves: "Membership and membership lists" — [fol. 160] Mr. Hawes: And —

Mr. Reeves: — "pertaining to identity of members"

Mr. Hawes: And "records of those paying dues."

Mr. Reeves: No, no, that's not the way it reads, sir. It reads "and membership lists pertaining to identity of members and those paying dues."

"Membership lists"; that word qualifies "membership lists."

Mr. Hawes: "Bring the following books and records and membership lists pertaining to the identity of members and those paying dues" is the way that subpoena reads, Mr. Chairman, and I submit that it covers those deposit slips.

Mr. Reeves: Let her have her copy back, please.

(The witness' subpoena was returned to her)

Mr. Hawes: "Books and records and membership lists pertaining to identity of members and those paying dues."

[fol. 161] By Mr. Hawes:

Q. If you have among your deposit slips any of them with the names of any members that have paid you dues, would you have any reluctance to bring them here with you to consult?

A. (After conferring with counsel) Well, I can check my records and notify the Committee.

The Chairman: I would like to have that question and answer again.

Mr. Hawes: Read the question, please, Nat.

(Last question read)

The Witness: Well, the members don't pay me dues. The members don't pay me dues; they don't pay any dues to me.

The Chairman: Counsel, I'd like to know if she has any records at all that would interest this Committee, if she would have any hesitancy to bring them before this Committee for the purpose of consulting herself and answering questions.

Mr. Carter: In answer to the question, if the Committee [fol. 162] wants specific records; the Committee asked the witness to bring the records before them.

Now, asking about records, the possibility of what might be in the records, this question cannot be answered. If you want any specific records, ask Mrs. Albury for those records and she will attempt to get them for you.

By Mr. Hawes:

Q. Would you have any hesitancy in bringing with you those portions of your treasury records in your possession which indicate individuals' membership in the NAACP?

A. I don't have any records to do that.

Mr. Carter: There are no such records.

By Mr. Hawes:

Q. Well, didn't you just tell me that when you got checks from individual members for their dues, that you sometimes put those members' names on the deposit slips?

A. I don't look, when I get those—that money, and I [fol. 163] begin listing currency and silver, I just list what's on the bottom of the check, the maker of the check; or sometimes the bank for which—from which the check comes from.

Q. The maker of the check, and if he's a member, and gave you that check—

A. Well, I don't know if he's a member.

Q. —for his dues, that is a record of yours that indicates membership in the NAACP, isn't it?

A. No, it wouldn't indicate his membership. That would indicate that he gave me a check, or that I received the check.

Q. And you, as treasurer, couldn't look at that and tell whether that was for dues or what it was for?

A. No. I can't look at that and tell whether it's for dues.

Q. When you got this subpoena, did the possibility of bringing your deposit slips up here come up for discussion between yourself—

A. No.

Q. —and your counsel at all?

A. No,—

Mr. Graves: Wait a minute.

[fol 164] The Witness: No, no, because that wasn't listed in the subpoena, and that was the reason why.

By Mr. Hawes:

Q. Reading that subpoena, you don't think that subpoena calls for all records in your possession pertaining to the identity of members of the NAACP?

A. No, I didn't think a check, or something like that, would pertain to identity at all; I thought you had reference to the membership lists.

Q. Yes.

Do you know the man in this photograph? Do you recognize him?

A. No, I don't.

Q. Never saw him?

A. No.

Q. How about the man in this one?

A. I don't know him either.

Mr. Carter: Would you identify these people, please?

Mr. Hawes: If she doesn't know them, it's immaterial to the record.

Mr. Reeves: Well, it may not be immaterial to the record.

[fol 165] Mr. Carter: It may not be immaterial to the record.

Mr. Reeves: Suppose you put on evidence to show that she's—what she says is not true. We want to know what these photos are.

Mr. Hawes: I'll build this record as I go, Counsel.

Do you know—

Mr. Carter: Well, I want to appeal to the Chair—

Mr. Reeves: Well, that's all right.

Mr. Carter: It seems to us that the identity of unknown persons—

Mr. Hawes: If she identifies one of these people, that person will be identified. Otherwise, I'm not going to call the name of every one of these people in the record.

Mr. Reeves: Well, let me say this, Mr. Chairman, that unless Counsel identifies the photograph—

Mr. Carter: The unknown photograph.

[fol. 166] Mr. Reeves: —the unknown photograph by some means, by number or some other means, we cannot permit the witness to answer the question.

Mr. Carter: We don't know who it is.

Mr. Reeves: We don't know what photograph that is, what exhibit that is.

Mark it for identification in some way; otherwise we'll have to—

Mr. Hawes: I will mark any photograph the witness recognizes.

Mr. Reeves: Well, now, if you don't mark it when you ask her a question, she's not going to answer.

Mr. Carter: How can she answer that question?

Mr. Hawes: (After conferring with the Chairman) Nat, mark all these pictures, 1, 2, 3, 4, 5, right down the line, till you get to the end of them.

(Whereupon, the photographs above referred to were marked Committee's Exhibits 1 through 12, both inclusive, for identification)

[fol. 167] By Mr. Hawes:

Q. I show you—

Mr. Reeves: Excuse me, Mr. Hawes.

May we go back, for purposes of the record, and with respect to those on which you've already asked the questions, indicate the identification numbers on those photos.

Mr. Hawes: I've asked her about Photo 2, Photo 1, Photo 3; I didn't ask her about Number 4 as a photograph; she knew the man personally.

Mr. Reeves: But 1, 2 and 3 she's denied recognizing—  
Mr. Hawes: No, that's right.

By Mr. Hawes:

Q. Do you recognize the man on Photograph Number 5 here?

A. I do not.

Q. Do you recognize the man on Photo 6?

A. No, I don't.

Q. How about Photo 7?

A. No.

Q. Number 8?

A. No.

[fol. 168] Q. Do you recognize either of the two men in Number 9?

A. No, I don't.

Q. Do you recognize the man in Number 10, in the middle?

A. I saw him in the witness—over there in the witness room; that's the only time that I can remember seeing him.

Q. You never saw him in Miami, that you can remember?

A. No.

Q. Do you recognize the woman in Photo 11?

A. No, I don't.

Q. How about this man in 12?

A. No.

Q. Do you know the Reverend Edward T. Graham?

A. Yes, I do.

Q. Do you know whether or not he is a member of the NAACP?

A. (After conferring with counsel) Will you explain to me the pertinency of this question as it relates to the inquiry?

Q. Do you know the Reverend Gibson?

A. (After conferring with counsel) Will you explain to [fol. 169] me the pertinency of that question as it relates to the inquiry?

Mr. Hawes: All right, you may step aside.

Mr. Reeves: May this witness be excused, Mr. Hawes?

Mr. Hawes: I think so, Counsellor.



Mr. Reeves: Thank you, sir.

(Witness excused)

Mr. Hawes: Call Ruth Perry, please.

Mr. Strickland: Ruth Perry.

The Chairman: You understood, Counsel, that she could be excused from any further testimony?

Mr. Reeves: Yes. Thank you.

(The following witness was represented by counsel, Frank D. Reeves, Robert E. Carter and G. E. Graves, Jr.)

Thereupon, RUTH PERRY, having been called and duly sworn as a witness, was interrogated and testified as follows:

### Examination.

By Mr. Hawes:

Q. Please state your full name.

[fol. 170] A. May I make a statement?

Q. Do you have it in writing?

A. No.

Q. Is it a short statement?

A. Yes.

Q. All right, proceed.

A. I would like to state that I have never been a Communist; I am not now a Communist; and I never intend to be.

To the contrary, I am a firm and sincere believer in democratic principles, as set up by the United States Constitution.

Q. All right.

Now, state your full name. I don't believe we have that in the record yet.

A. Ruth Willis Perry.

Q. Where do you live, please?

A. Miami, Florida.

Q. Your subpoena that you have, under which you are here today, does it call for any books or records?



A. It does.

Q. Have you brought any books or records with you?

A. I have not, because I do not have them in my possession [fol. 171] session.

Q. You have none in your possession?

A. Right.

Q. Did you have any of the things called for by that subpoena in your possession when it was served on you?

A. I did not.

Q. Do you hold any office in the NAACP presently?

A. Yes, I do.

Q. What is that office?

A. I am secretary of the Miami branch.

Q. Secretary of the Miami branch?

A. (The witness nodded affirmatively)

Q. How long have you held that position?

A. About five years.

Q. Now, as secretary, do you handle general correspondence for the branch?

A. That's right.

Q. What records do you maintain, as secretary?

A. I maintain a minute book, and that's all.

I have—that's all I maintain, actually, in my possession. [fol. 172] Q. A minute book?

A. Yes.

Q. I suppose that book reflects the official actions of your organization at your meetings?

A. That's right.

Q. Do the individual names of individual members appear in your minute book?

A. Just official business. I don't believe individual names would appear, except the officers, perhaps.

Q. Who is the official custodian of the records of the Greater Miami Branch of the NAACP?

A. Since a year ago, Father Gibson has been the official custodian of the lists, the membership lists.

Q. Before that, you were the custodian?

A. Yes.

Q. If I understand, you had possession of the records until the Miami hearing?

A. No, no—until, yes.

Q. Until the Miami hearing—

A. Yes.

Q. —and then you turned them over to him?

A. No, that—the first—just a moment.  
[fol. 173] I didn't have any records the first time I was subpoenaed, and since about a year ago.

We did maintain some records, but they have been under Father Gibson's jurisdiction.

Q. Why was that change made in the custodianship of those records?

A. (After conferring with counsel) May I ask the relevancy of that to the inquiry?

Q. Yes. The membership lists, or any records indicating membership in the NAACP in Dade County, under the decision of the Court in your case, that is, your case and the other cases of Gibson and Graves and Albury, I believe, are all pertinent to this inquiry to be brought here under that Court's decision, for the purpose of you witnesses consulting them during the giving of your testimony; and I want to determine whether or not there has been any deliberate or wilful attempt to evade the process of this Committee in regard to those records.

A. No.

Q. Now, that's not my question.

My question is—

A. To my knowledge, there has been no deliberate attempt—  
[fol. 174]

Q. My question is, why was a change made a year ago in the official—in regard to the official custodian of those records?

A. They were kept in the NAACP office, under Father Gibson's jurisdiction.

Q. Since a year ago?

A. Yes.

Q. Where were they kept prior to that time?

A. There weren't any.

Q. Well, you just told me that you had the records up until—

A. My minute book.

Q. —about a year ago?

A. My minute book.

Q. Well, you still have your minute book, don't you?

A. Yes.

Q. Well, what record was it that you had over a year ago that Father Gibson has now?

A. Just a moment.

Q. That's what I'm trying to determine.

A. (After conferring with counsel) I had no records.

Q. Well, what change was there that happened a year [fol. 175] ago?

A. (After conferring with counsel) I can't answer that question.

Q. What do you mean by that, Mrs. Perry?

(The witness conferred with counsel)

Mr. Reeves: Would you repeat the question so that we can understand the question?

Mr. Hawes: The last question I asked her was what change had been made in regard to the official custodian of the records, a year ago.

The Witness: We never had an office before, an official office.

By Mr. Hawes:

Q. Well, what record was it that you kept prior to a year ago that Reverend Gibson now keeps?

A. No records.

Q. None at all?

A. None at all.

Q. Well, then, there hasn't been any change in the custodianship of the records, then?

A. I believe there has been, because Father Gibson is president of the branch.

Q. Well, he's been president—

[fol. 176] A. So instructed me.

Q. He's been president for five years, hasn't he?

A. He so instructed me.

Q. Instructed you to do what?

A. That he was custodian of the membership lists.

Q. And they are in his possession, the membership lists?

A. Right.

Q. Prior to that, you had the membership lists?

A. I had no records.

Q. Well, why did Reverend Gibson instruct you, then, that—

Mr. Carter: Just a moment. We—

Mr. Hawes: Let me withdraw that question.

Mr. Carter: Go ahead.

By Mr. Hawes:

Q. Who had the membership lists prior to a year ago?

A. There were no membership lists.

Q. There were none? There were never any?

[fol. 177] A. We didn't have any.

Q. Since you first became secretary of this organization, there never were any membership lists in your possession?

A. You didn't ask—(conferred with counsel)—I had no records when I—when we had the first hearing; and after that, I kept a minute book, but that—the records would not be membership lists. I didn't keep those, those were in the—when we started keeping them again, they were in the NAACP office.

Q. But immediately prior to the first hearing, to which you were subpoenaed, you did have the membership lists in your possession, didn't you?

Mr. Graves: Just a second.

The Witness: (After conferring with counsel) I didn't. I had had none for several months.

By Mr. Hawes:

Q. For several months?

A. Right.

Q. All right. Several months prior to the first hearing of this predecessor to this Committee, to which you were subpoenaed, you did have membership lists in your possession, didn't you?

[fol. 178] A. (After conferring with counsel) Would you explain the pertinency of this to the inquiry?

Q. I am seeking to determine what records were in existence, indicating membership in the NAACP, what rec-

ords have been in your possession, of that nature, and where they are now, and who might have them?

Mr. Reeves: Mr. Chairman, Counsel, as we understand it, the subpoena calls for records presently in the custody of this witness.

In addition to that, the Supreme Court decision to which Mr. Hawes has referred, referred to the records of—present membership records, or any records presently in the possession of this witness.

This witness has testified that she has no such records.

Now, what records she may have had in 1956, we submit are neither pertinent to this inquiry under the authorization of this Committee, nor under the present subpoena, and we feel that they are, therefore, irrelevant, and it's immaterial, as to what records she may have had at some time, three years ago. Her testimony is that she had no such records since this Committee was established; she has no records at present, and we submit that it's irrelevant as to what she may have had several years ago.

Mr. Hawes: Counsel, I feel that these records that she had in her possession three years ago are material to be brought before this Committee in regard to—insofar as they show membership, to be consulted by whoever has them in their possession as a witness before this Committee, and any knowledge this witness has as to where those records are now, and who is the official custodian of them, so that we can subpoena them here, is certainly material and pertinent to this inquiry.

The Witness: I do not know where those records are.

By Mr. Hawes:

Q. Do you know who has them?

[fol. 180] A. I do not.

Q. Where were those records the last time you knew of your own knowledge where they were?

A. I gave them to Attorney Graves, as I so testified at the first hearing, and I do not know where they are.

Q. You haven't had any knowledge of where they are since then?

A. No.

Q. How long did you say you had been a member of the NAACP in Miami?

A. I believe about six or seven years.

Q. Six or seven years.

All right. Do you know the man depicted in this picture, Number 4?

Mr. Graves: Just one second.

The Witness: (After conferring with counsel) What is the pertinency to this inquiry, please?

By Mr. Hawes:

Q. The man depicted in this picture Number 4 is James Nimmo, on whom we have evidence indicating that he is or has been a member of the Communist Party, and I desire to ask you if you know him, and whether you've seen him at [fol. 181] any NAACP meetings, or knew him to be a member of the NAACP?

A. "No" to all of those, to my knowledge.

Q. You don't know the man?

A. No ma'am—no sir, I mean.

Mr. Hawes: In order to save time, Counsel, if she doesn't know them, just let her say she doesn't know them, and any that she might know, I'll state the pertinency, if you—

Mr. Carter: Fine.

Mr. Reeves: Just identify the pictures, please.

By Mr. Hawes:

3? Q. Do you recognize this person in Photograph Number

A. I do not.

Q. Do you recognize the person in Photograph 1?

A. I do not.

Q. Do you know this person in Photograph Number 12?

A. Never seen him.

Q. Do you know this person in Photograph Number 11?

A. I do not.

[fol. 182] Q. Do you know this person in Photograph Number 10, in the middle?

A. I know who he is.



Q. Have you seen him in any NAACP meetings?

A. I have seen him occasionally at—very rarely—at the public meetings, to which anybody can come to.

Q. You mean NAACP meetings?

A. (The witness nodded affirmatively)

Q. Do you know whether or not he's an official member of the NAACP—

A. I do not.

Q. —of your own knowledge?

A. I do not.

Q. That's Abe Sorkin, isn't it?

A. It is.

Q. Do you know either of the men in this Photograph Number 9?

A. I do not.

Q. Do you know this man in Photograph Number 8?

A. No.

Q. Do you know this woman in Photograph Number 7?

A. No, I don't.

[fol. 183] Q. Do you recognize this man in Photograph 6?

A. I do not, no.

Q. How about this one in Photograph Number 5?

A. No sir.

Q. Do you know this man in Photograph Number 2?

A. No sir.

Q. Which branch, Mrs. Perry, of the NAACP were you a member of before the consolidation? As I understand, you now have a consolidation of—

A. The Miami branch.

Q. You were in the Miami branch?

A. Yes sir.

Q. And am I right, then, in assuming that you wouldn't—you would recognize only those people that attended the meetings of the Miami branch?

A. Well, sometimes it's difficult to—you can't always recognize who's present at a meeting, at some of our large public meetings, but those that I had seen there once or twice, I might recognize.

Q. What I was getting at, if these people had attended [fol. 184] meetings, these people that you don't recognize.



of some branch other than the Miami branch, prior to the consolidation—

A. Uh huh.

Q. —you probably wouldn't recognize them at all any-how?

A. That's right.

Q. Mrs. Perry, do you have anything to do with the keeping of records showing who have paid their dues to the NAACP?

A. No, I don't.

Q. Have you ever had anything to do with the keeping of those records?

A. Those are—

Q. Showing—

A. Those are contained on the membership cards.

Q. On the membership cards?

A. Yes, that information.

Q. Those records, are they actually some regulation size cards, or is it just a list of names on a piece of paper? What is the nature of those records?

A. I believe they are kept in a card file.

Q. Card file system?

[fol. 185] A. Yes.

Q. And those card files contain, I assume, the name of the individual; probably, his address, and whether his dues are currently paid or not?

A. Well, I believe only the current members are kept in such a file.

Q. Yes.

Do you know what the policy of your branch is now, in regard to members, the records of members who do not renew their membership? What happens to their card files?

A. To the best of my knowledge, I don't believe any record is kept.

Q. Is it pulled out of the file and destroyed, if you know, or is it left in the—

A. I don't know. I'm sorry, I don't know.

Q. You just don't know?

A. I just don't know, no.

Q. You don't know whether they maintain a delinquent, or dead file on those people?

A. I do not.

Q. There has been some indication from a previous witness that people joined the Association; the treasurer was here a few minutes ago, and she indicated that she didn't have any records to show who was paid up and who [fol. 186] wasn't. Who would have the records, and what would they consist of, if you know—

A. That would be—those would be the records in Father Gibson's possession.

Q. That would be the membership lists?

A. Yes, that's right.

Q. That information would be on those?

A. That's right.

Q. Are there any particular qualifications for a person to join your branch of the NAACP?

A. You mean as a member?

Q. Yes.

A. I believe no, if they have the money. I mean, if they can pay the dues, they can join.

Q. What are the dues?

A. The lowest membership is \$2, and there's one at \$3.50; goes up to \$10.

Q. That's annual?

A. Yes. They have to be paid annually.

Mr. Carter: One moment—

By Mr. Hawes:

Q. Now, as secretary and treasurer—

A. (After conferring with counsel.) Pardon.

If I may add something: Members have to agree to the [fol. 187] principles of—principal objectives of the Association.

Q. What, as secretary and treasurer of the Greater Miami Branch—

A. I am not. I am just secretary.

Q. You are—just secretary.

As secretary, do you have any correspondence or make any reports to the state organization, the Florida Conference?

A. As far as I know, no. I don't believe I ever have.

Q. You don't think you've ever made a report for that?

A. No, I don't think I ever have.

Q. You have in your possession, as I understand you now, no records at all, indicating the names of any of the individual members of the NAACP with the exception, possibly, of the names of some officers that appear in your minute book?

A. That's right.

Q. Do your minutes reflect, during meetings, that a certain member will get up and make a motion, and another member will second the motion, or do you ever record—or do you have such a thing as a roll call vote, where—on [fol. 188] which occasion the members would appear there?

A. You mean for the entire membership?

Q. For any of them?

A. I don't believe so.

Q. Do you have a roll call on anything in your meetings?

A. No, not in a general membership meeting, no.

Q. Do you have a roll call where your members vote by name, and are recorded in your minutes by name at all?

A. (After conferring with counsel) I believe—I was trying to think.

I think the only—the only time that we would vote by name would be when we are voting for an election of officers. I believe that's the only time.

Q. Well, now, do your minutes—your minutes, then, would reflect the names of the members present when you vote on officers?

A. No, no, I don't think so; just the ones who are running for office.

Isn't that right? (Addressing her counsel)

Mr. Carter: Yes.

[fol. 189] The Witness: That's what I believed.

By Mr. Hawes:

Q. Well, are you sure about that?

A. To the best of my knowledge, yes.

Q. When you have two candidates running, say, for president or vice-president, you have a roll call vote on that?

A. No, not a roll call; it's a ballot.

Q. A ballot?

A. Yes.

For instance, if I was running and Mrs. Albury was running for an office, there would—the people would just vote—who were present, vote for Albury or Perry.

Q. On a piece of paper?

A. Yes.

Q. A ballot?

A. That's right.

Q. A secret ballot?

A. Yes.

Q. And those are collected together; all you have there is the name of the candidate?

A. That's right.

Q. And in your minutes, you just note the results of [fol. 190] that?

A. That's right.

Q. Perry, so many votes; Albury, so many votes?

A. That's right.

Q. Does the voter's signature appear on your records anywhere—

A. No, it does not.

Q. —as to that vote, to qualify the vote?

A. No, it does not.

Q. In your meetings, do you have a reflection in your minutes that one member will make a motion, and maybe another member, by name, will second that motion? Would the names of the people moving business in your meetings appear in your records?

A. (After conferring with counsel) I don't believe so.

Q. Have you checked them to see?

A. Let's see. I don't recall that.

Q. You don't know whether they appear or not?  
A. No, I don't.

(At this point Senator Hodges took over as Chairman, in the temporary absence of Representative Herrell)

[fol. 191] Mr. Hawes: All right, Mrs. Perry, you can stand asides.

Mr. Reeves: May this witness be excused, sir?

Mr. Hawes: I think so, Counsel.

Mr. Reeves: Thank you.

The Witness: Thank you.

(Witness excused)

Mr. Hawes: Counsel, (addressing Mr. Graves) can we ask you a few questions now?

Swear, this witness.

(The following witness was represented by counsel, Robert L. Carter, and Frank D. Reeves)

GRATTAN E. GRAVES, JR., having been called and duly sworn as a witness, was interrogated and testified as follows:

Examination.

By Mr. Hawes:

Q. Please state your full name for the record?

A. Grattan E. Graves, Jr.

Q. You're from Miami?

A. Miami, Florida, sir.

[fol. 192] Q. And you are counsel for the Greater Miami Branch of the NAACP?

A. Yes, I am.

Q. Counsellor, do you have in your possession now any records of the NAACP at all that indicate membership or the payment of dues by members to the NAACP?

A. I have my own personal membership card; that's all.

Q. That's all?

A. (The witness nodded affirmatively.)

Q. Do you have, of your knowledge, any information as to where any such records are, with the exception of those in the possession of Reverend Gibson?

A. You mean current records, of course?

Q. Well, we'll take current records at this time?

A. No, I don't, sir.

Q. Do you have any knowledge of the existence or whereabouts of any such records, not for the current year, but for the past—going back from one, say, to five or six years?

A. Any actual knowledge, at the present time, as to the existence of the records?

[fol. 193] No, I don't.

Q. You don't know whether the records are now in existence anywhere or not?

A. No, I don't.

Q. Counsel, have you made any effort to ascertain whether they are in existence or not?

A. Not recently.

Q. Did you make any attempt within the last, say, two years? You remember, you told us—

A. Yes.

Q. —you would make an attempt?

A. Yes.

Q. Did you make an attempt to—

A. Yes, I did.

Q. —to find out about it at that time?

A. Yes, I did.

Q. Did you find out—

A. As a matter of fact, I make a trip to New York to see about those records, and they refused to give them to me.

Q. They refused to give them to you?

A. That's right.

Q. Those records are the same records that you told us previously you had collected on orders from your chief counsel, and had turned over to him?

[fol. 194] A. I assume they are.

Q. The last you know of them, they were in the national office, or you turned them over to that office?

A. The last I've seen or heard from those records.



Q. And they refused to give them back to you?

A. That is correct, sir.

Q. Can you give me the approximate date that you tried to get them and were refused them?

A. No, I don't have any present recollection, except that I might refer to a time prior to the time I received a subpoena from this Committee.

Q. Which hearing was that?

A. The first hearing. It might have been—must have been several months before then.

Q. That's when you gathered them up and turned them over?

A. That is correct, sir.

Q. Now, what I'm trying to get at, Counsel, is when was the time that you made inquiry about getting them back, and were refused them. Do you know about when that was?

A. Do you have a transcript of the original hearing, sir?

[fol. 195] Q. Yes, but I don't think I have it here.

A. (After conferring with counsel) The hearing which was held at—that portion of the hearing which was held in Miami.

Q. The last one?

A. The first one.

Q. Did you—

A. In that first hearing, I made a statement that I would make a good faith effort to—

Q. Try to get the records back?

A. —try to get the records back.

Approximately—it was approximately two months after that hearing that I went to New York and inquired about the records. I didn't go, necessarily, for that purpose, but I happened to be there, and I did call on the national office.

Q. Yes. That would have been about two months after the first hearing, whenever that was?

A. That is correct, sir.

Q. Counsel, how long have you been a member of the NAACP?

A. You mean of the organization itself, or the Miami branch?

Q. In Miami?

[fol. 196] A. In Miami?



The first time I joined must have been about 1946.

Q. Now, do you recognize the man in this Photograph Number 2?

A. Yes, I do.

Q. Did you know him as a member of the NAACP?

A. No.

Q. This is Leo Sheiner, isn't it?

A. Of course, it is.

Q. Have you seen him at any meetings of the NAACP?

A. I don't recall it, sir.

As a matter of fact—let me say this—I have only been to some two or three meetings during the many years that I've been a member of the Miami branch. It's my policy not to go to the general membership meetings.

Now, if you want me to explain why, I'll tell you.

Q. Well, you may explain it if you want to; I'm not particularly interested in—

A. All right.

Q. —why you do or don't go to the meetings.

[fol. 197] A. All right.

Q. Do you recognize this man in Photograph 5?

A. No, I don't.

Q. How about this one in this Photograph Number 6?

A. I don't recall ever seeing that man.

Q. Do you know this woman in Photograph 7?

A. No, I don't.

Q. Do you know this man in Photograph 8?

A. No, I don't.

Q. Do you know either of the men in this Photograph, which is Number 9?

A. No, I don't.

Q. Do you know this man in the middle of Photograph Number 10?

A. Yes, I know him.

Q. Do you know whether he's a member of the NAACP?

A. No, I don't.

Q. Or has ever been?

A. No, I don't.

Q. You don't recall ever seeing him at a meeting?

A. No, I don't recall seeing him.

[fol. 198] Q. Do you know this woman in this Photograph Number 11?

A. No, I don't.

Q. How about this one, this man in Photograph 12?

A. I don't recall ever seeing that man before.

Q. How about this man in Photograph Number 1?

A. No, I don't.

Q. This woman in Photograph 3?

A. I don't recall ever seeing that woman.

Q. How about this man in Photograph Number 4?

A. Yes, I know him personally.

Q. Do you know whether he was a member of the NAACP or not?

A. I believe at one time he was.

Q. In Miami?

A. In Miami.

Q. That's James Nimmo?

A. James B. Nimmo.

Q. Now, Counsel, you were here yesterday when Reverend Gibson was on the stand. You represent him, don't you?

[fol. 199] A. Yes, I do.

Q. You—

A. I represent him as co-counsel.

Q. I mean in connection with this hearing?

A. Yes.

Q. And of course, you know him to be president of the Miami Branch. You heard him say that yesterday?

A. Yes, I recall hearing him say that.

Q. Do you remember, he mentioned some resolutions that had been passed by the national convention, in regard to the expulsion or termination of membership of subversive persons, or persons connected with subversive organizations from the NAACP?

A. Yes. I think he referred to action taken in the respective national conventions, that's correct.

Q. That's correct.

Now, I believe he stated that the national convention had authorized the local branches, all of them, including the Miami Branch, to expell or to terminate the member-

ship of a person who was a Communist or belonged to Communist front organizations?

[fol. 200] A. Yes, and if I recall correctly, Father Gibson presented the resolutions themselves. I think those resolutions bear particular dates, do they not? You have them here?

Q. We have them.

A. You have them here?

Q. We have them here, yes.

A. All right.

Q. Do you know whether or not any member of the NAACP in Dade County has been expelled, or his membership terminated, pursuant to those resolutions, or any of them?

A. Not to my knowledge.

As a matter of fact, I can also say, in answer to that question, I don't know anybody who's a Communist in it.

Q. You have no personal knowledge?

A. No sir.

Q. As far as you know, no one has been expelled under those resolutions?

A. Of course, I told you already that I don't know what happened in those meetings, but as far as I know, no one has.

Mr. Hawes: All right, Counsel.

Thank you.

[fol. 201] Mr. Reeves: May this witness be excused?

Mr. Hawes: I have no objection.

Mr. Reeves: As a witness, of course.

(Witness excused)

Mr. Hawes: Call Reverend Gibson back, please.

(The following witness was represented by counsel, Frank D. Reeves, Robert L. Carter and G. E. Graves, Jr.)

Thereupon, THEODORE R. GIBSON, having been heretofore duly sworn as a witness, was recalled and testified further as follows:

### Examination.

By Mr. Hawes:

Q. Reverend, you were sworn yesterday, weren't you?

A. I was.

Q. You realize you're still under oath?

A. I do.

Q. Reverend, yesterday, when you were here, you remember, you produced some resolutions of the national [fol. 202] convention, with regard to action taken by the convention, authorizing your local branches to expel or terminate the membership in the NAACP of persons belonging to subversive organizations?

A. Yes sir.

Q. Has your branch of the NAACP expelled any person, or terminated the membership of any person pursuant to those resolutions?

A. Not to my knowledge. No one has been—no person has been brought to our attention as having been proven to be a part of any subversive group.

Q. Now—

A. That is, in my administration.

Q. That's in the last five years?

A. Yes.

Q. Now, in connection with that, Reverend, do you have any sort of—or does NAACP itself have any sort of investigative program to determine whether you have people in your organization that fall within the orbit of those resolutions?

A. Let me say this, that the specific investigation we have would be—would affect any and all officers.

Now, when it gets to an individual in the organization, if we hear about them, we would make an investigation. [fol. 203] If we do not hear about it, for instance, as you are doing now, if you were to say to us that we have information that John Doe is a Communist, at our very

next meeting, or as the members might direct—at our very next meeting, we would take appropriate action; and that has been the general policy and method of operating.

Q. If I understand your statement, you, in your branch, you do make an attempt to ascertain whether or not your officers belong to any subversive organization, as a matter of course?

A. As a matter of must.

Q. You see—

Q. I say, you do that in any case?

A. Yes, yes.

Let me explain to you how that's done: In the month of—say, at a given time, sir—I think it's in the month of October, a nominating committee is elected.

In the month of November, the nominating committee makes its report.

Now, before a person could be elected to office—I mean nominated in our branch, which is true for all branches, he must be interviewed, and we ask him specifically, certainly, [fol. 204] because of this resolution, you see.

Now, when it gets to members at large, you can't do that in your general membership, but if we have any knowledge that John Doe is a member of a subversive group, all you do is—all we would do—this is the machinery—we call the member—call the board into session, and the board will vote there and then to have that person—that person's membership rejected, and so notify the national office.

I mean, it's the only way that we—the only sensible way that we know to do it.

Q. As far as you know, during your last five years, you haven't had occasion to invoke the provisions—

A. No.

Q. —of that—

A. No sir.

Q. —resolution?

A. No sir.

Q. I don't remember, Reverend, whether I showed you these photographs yesterday or not. Did I?

A. You showed me some. I don't know—you showed me about five or six.

[fol. 205] Q. Well, just quickly then, in order to save time, I'll shew you these photographs.

A. All right, sir.

Q. Do you recognize this person in Photo 2?

A. I do not know who that is. That— I don't know, it appears to me that that picture, I saw in the newspaper; I may be wrong; I'm not sure.

Q. Do you have any recollection of him in connection with the NAACP—

A. No.

Q. —that's what I'm asking you.

A. No, no, no, no, no, no.

Q. How about this one in Photograph 5?

A. I don't know that man.

Q. This one in Photograph 6?

A. I don't know him.

Q. This woman in Photograph 7?

A. I don't know her either.

Q. This man in Photograph 8?

A. Never saw him before.

Q. He's the one that everybody seems to enjoy.

How about these two in Photograph 9?

A. I don't know them, sir.

Q. This man in the middle in Photograph 10?

[fol. 206] A. Yes. He's the man that's in the witness room.

Q. Yes.

A. But I don't—let me say—I explained yesterday how I know him. He runs a filling station.

Q. I believe that's right.

A. Yes.

Q. You said you never saw him in an NAACP meeting?

A. He's not—well, let me say that I don't know him as an NAACP man, but I do know him as an operator of a filling station.

Q. Did you tell me that you had never seen him at a meeting?

A. I told you I did not know him.

You see, we have mass meetings, and then, anybody can come to a mass meeting; or if—even if you have a regular

membership meeting, anybody can come, but you can only—you only have certain rights and privileges, based on membership, and that is exercised at the annual election.

Q. Well, then, you know the man because you see him there at his business?

A. Yes.

[fol. 207] Q. And I take it, from your answer, that you don't know whether you've seen him in a mass meeting or not, but you have no specific recollection of ever seeing him at a meeting? Is that what you're saying?

A. Well, he could have been to a mass meeting. You know, at mass meetings, you have, maybe, a thousand people; that is—a man could have been there.

I wouldn't—of course, I would be lying if I said he didn't do that. I wouldn't know that.

Q. You have no specific recollection of seeing him, though?

A. Let's say I have no specific recollection of our regular membership meetings.

Now, as to a mass meeting, that, he could have been there, and that's a different matter.

Q. How about this woman in Photograph 11?

A. I don't know her.

Q. And—

A. I don't know him.

Q. —this Photograph 12?

A. I don't know him.

Q. This man in Photograph 1?

[fol. 208] A. I don't know him.

Q. This man in Photograph 3?

A. That woman? I don't know who she is.

Q. You don't know her?

A. No.

Q. How about—

A. I know that man, and I said yesterday that I—

Q. That's Photograph 4?

A. Yes. I know him in my coming-up days. He was a man then. You see, I was born and reared in Miami. So, if anybody has been around any length of time, I would know the—well, I would know—I wouldn't know



everybody, but if he is anybody of any consequence I would have, conceivably, known him, but I do not know him.

He is not affiliated—well, let me put it this way: I do not know him as an NAACP individual, this man. His name is—

Q. Have you ever known him in the NAACP?

A. No sir, no sir.

Q. Reverend, I was curious: Do you know whether Reverend Graham is still in the NAACP?

Mr. Graves: Wait a minute.

The Witness: Well, I—

[fol. 209] Mr. Graves: Wait a minute. Don't answer that.

The Witness: Well, maybe I need to ask you the legal term: What is the pertinence of the question?

By Mr. Hawes:

Q. Could we just chat informally a minute? Maybe you will and maybe you won't. I will—

Mr. Graves: Not on the record, no.

Mr. Hawes: No, let the record run. I doubt if the witness will answer this question:

What is the significance of the fact that he is the only one that comes up here with—not represented by the lawyers, regular lawyers to your outfit? Is there any particular reason for that that you care to—you don't have to answer that question if you don't want to.

The Witness: Well, certainly, I don't want to. I think that's his matter.

Mr. Hawes: All right.

[fol. 210] Mr. Graves: Of course, we point out that it appears that the Reverend Graham is very ably represented.

Mr. Hawes: Oh, yes.

Mr. Simon: We will stipulate.

(Laughter in the hearing room)

By Mr. Hawes:

Q. Now, Reverend, you were here yesterday, and we asked you about your—I think the Chairman finally di-

rected you to bring your records of the membership here to have at your feet to consult?

A. Yes.

Q. Is your position on those records still the same as it was yesterday?

A. Unequivocally, it is the same.

Q. Still the same?

A. Unequivocally, the same.

Mr. Hawes: All right. You can stand aside.

Mr. Reeves: May this witness be excused?

Mr. Hawes: I think so.

Mr. Reeves: Thank you.

(Witness excused)

[fol. 211] The Chairman: (Representative Herrell) Counsel, did he understand that he's excused?

Mr. Hawes: Yes.

Mr. Reeves: Yes sir.

Mr. Hawes: Call Richard Stiller.

Mr. Strickland: Richard Stiller.

(The following witness was represented by counsel, Tobias Simon)

Thereupon, RICHARD STILLER, having been called and duly sworn as a witness, was interrogated and testified as follows:

#### Examination.

By Mr. Hawes:

Q. Please state your full name.

A. Richard Stiller.

Q. Where do you live, Mr. Stiller?

A. Hialeah.

Q. In Dade County?

A. That's right.

Q. How long have you lived there?

A. Approximately two and a half years; since February,

Q. Where were you from prior to that time?  
[fol. 212] A. Would you explain to me, sir, the relevance of that question?

Q. Well, I'm just—wanted to know—

Mr. Simon: You can answer that.

By Mr. Hawes:

Q. (Continuing) —generally, where you're from. It's of no particular importance.

A. New York City.

Q. New York City?

A. That's right.

Q. You, of course, are the husband of Fannie Stiller?

A. That's right.

Q. And she was here yesterday.

I assume you moved to Miami together, at the same time; I believe that's the date she gave—

A. That's right.

Q. —is that correct?

Now, Mr. Stiller, since you have been—first, I'll ask you, since you have been in Florida, have you been associated with the Communist Party at all—

A. No sir.

Q. —in any fashion?

[fol. 213] A. No sir.

Q. Before coming to Florida, were you ever associated with them?

A. (After conferring with counsel) Would you explain to me, sir, the relevancy of the question for this inquiry?

Q. Mr. Stiller, do you know of your own knowledge whether or not your wife was ever an official of the Communist Party?

(The witness conferred with his counsel)

By Mr. Hawes:

Q. Did you understand that question?

A. I believe so, sir.

I would like, first, to object to that question on the grounds that I feel it invades the privileged area; and

secondly, I would like to be informed of the relevance of that question for the purposes of this inquiry, and—I refer to the husband-and-wife privilege, of course.

Q. Are you saying, in effect, that any knowledge that you have of her was gained—if you're saying that, I think it's a good ground of objection, that your knowledge of your wife—any that you might have was gained in your husband-and-wife relationship. If you are saying that, I [fol. 214] think it's a valid objection, Counsel.

Mr. Simon: Counsel, we are—

✓ The Witness: That's what I'm saying.

Mr. Simon: If there was any communication at all, or any knowledge of any situation such as you're describing, it would be a privileged communication between husband and wife.

We defer on that ground.

Mr. Hawes: Mr. Chairman, I think that's a legal objection.

Representative O'Neill: To that particular question, Counsel.

By Mr. Hawes:

Q. Mr. Stiller, have you ever attended any Communist Party meetings yourself, or with your wife?

A. With regard, Mr. Hawes, to the period of time of my residence in Florida, which I think is the only period that such a question would be relevant to, the answer would be no.

Q. And as I understand you, you decline to answer as to any time back of the time that you moved to Florida. Is that your position, the same as your wife's was?

[fol. 215] A. Until such time as the relevancy is explained to me, yes sir, that's right.

Q. Are you a member of the NAACP now in Florida, or have you been since you've been in Florida?

A. No sir.

Q. Have you attended any meeting of it?

A. Of the NAACP?

Q. Yes.

A. No sir.

Q. Mr. Stiller, I don't know whether it's clear or not—I think I asked you if you had been associated with the Communist Party in Florida. Have you, since you have been in Florida, have you been associated with the Communist Party outside of Florida?

A. (After conferring with counsel) Insofar as the period of my residence in Florida is concerned, and restricting my answer to that period, the answer is no sir.

Q. You have not been associated with the Communist Party in any fashion anywhere?

A. No sir, not within the period to which I have restricted my answer.

Q. That's from now back to February 7, '57?

[fol. 216] A. Sometime early in February, yes sir.

Q. Mr. Stiller, have you any knowledge of your wife's possible membership in the Communist Party, independent of your husband-and-wife relationship with her?

A. (After conferring with counsel) No sir.

Q. You have none?

A. No sir.

Q. Have you ever attended a meeting of the Communist Party with your wife at all, at any time?

A. (After conferring with counsel) No sir, restricting my answer to the period aforementioned.

Q. I'm asking you to go back before the time you came to Florida. Did you attend any meeting of the Communist Party with her?

A. Would you explain the relevancy of that question, sir?

Q. Let me—have you been a member of the NAACP in any other state, Mr. Stiller?

A. Would you explain the relevancy of that, sir, please?

Q. Mr. Stiller, you heard the Chairman read his opening statement to the witnesses yesterday morning?

A. Yes, I did.

[fol. 217] Q. The NAACP, our records show, is a national organization, with a national body that maintains a rather strict control over its local branches and its state conferences.

This is an investigation, as you heard the Chairman state yesterday, into the NAACP, and possible infiltration of Communist or Communistic influence into the NAACP.

It's our view that that influence could be directed from outside of this state right into the local branch or into the local conference, and we think that it is relevant to know, if it's true, whether or not you were a member of the NAACP in another state, and if so, what position or what influence, if any, you might have held or had on it?

Mr. Simon: Counsel, in the interest of time, I would like to state that the witness' position is that despite the fact that everything you say might be true—and we don't have any knowledge of the matter, whether the NAACP is or is not a national organization is something I don't know anything about, but this is still a Committee of the Legislature of the State of Florida, and it is the witness' [fol. 218] position that anything that has occurred to him while he has been a resident of the State of Florida may or may not be relevant to this inquiry, but anything that has occurred to him at any time when he was not a resident of the State of Florida is clearly beyond the right of this Committee to inquire, and the witness has stated, and so states again, that from the period of February, 1957, to the present time, he has not been a member of nor affiliated with either the NAACP or the Communist Party.

Mr. Hawes: Then you decline to let him answer that question?

Mr. Simon: Yes sir.

Mr. Hawes: Mr. Chairman, I ask that the witness be instructed to answer that last question.

The Chairman: Repeat the question.

(Last question read)

The Chairman: Will the witness answer the question?

Mr. Simon: I respectfully submit, Mr. Chairman, that [fol. 219] that is—no question has been presented to us; that was Counsel's explanation as to the relevancy of the question.



By Mr. Hawes:

Q. All right. I'll restate the question:  
Have you ever been a member of the NAACP in any other state?

Mr. Simon: The witness respectfully declines to answer the question, on the ground that the relevancy has not been shown, and we respectfully further submit, if the Chairman please, that the statement given by Counsel does not, in our opinion, explain the relevancy of any membership that this man may have had in any organization in New York, in Minnesota, California or anywhere else.

This is a State Committee, and is not the Federal Government.

The Chairman: For the record, the Chair is going to direct the witness to answer the question.

Mr. Simon: The witness respectfully declines, sir.

[fol. 220]

By Mr. Hawes:

Q. Mr. Stiller, do you know of your own knowledge whether or not your wife has been a member of the NAACP in any state before she came to Florida?

A. My answer to that is, again, first, that I feel that such a question violates the privilege of a marital relationship; and secondly—

Q. Maybe we can save time on that, Mr. Stiller.

If you have any information in regard to that, are you telling me that that information was gained by virtue of the fact of your marriage relationship with your wife?

A. Yes sir, I have such information.

Mr. Hawes: I think that's a legal objection to that.

All right, Mr. Stiller, thank you.

Mr. Simon: Thank you, sir.

Mr. Hawes: This witness can be excused.

(Witness excused)

[fol. 221] Mr. Hawes: Call the witnesses, Gibson, Graham, and of course, Lowry is not—Gibson and Graham back into the door there just a minute.

Mr. Reeves: He's been excused.

Mr. Hawes: If he's been excused, why, we'll have to tell his counsel.

The Chairman: Who is counsel for Reverend Gibson?



Mr. Reeves: I am, as well as Mr. Carter—

Mr. Carter: I am also, and Mr. Graves.

The Chairman: We're going to adjourn the hearings for today, and excuse all of the witnesses.

We're going to hold—the Committee is going to hold Reverend Gibson, Reverend Graham and Reverend Lowry under subpoena for further notice.

Mr. Carter: Reverend Gibson has been excused.

Mr. Reeves: He's been excused, Reverend Gibson.

Mr. Hawes: You excused one of them.

[fol. 222] Mr. Reeves: Well, Gibson, and that's the only one—

Mr. Hawes: That's the only one that we've released. If you want to take that position, we've released him.

Mr. Reeves: We didn't anticipate this; that was why I asked the question.

The Chairman: Reverend Lowry and Reverend Graham, then, will be held under subpoena for further notice.

Representative O'Neill: Is Counsel taking the position that —

Mr. Hawes: They can go, but they'll receive any notice — they'll receive further notice before they have to appear, of course, but they are under the subpoena of this Committee right on.

The Chairman: But if they are recalled, they'll have ample notice.

Mr. Dixon: Now, does that mean that we can return to Miami? After all, we have business to attend to.

The Chairman: That's why we're trying to facilitate [fol. 223] this thing, so you won't sit around here until 2 or 3 o'clock.

Mr. Dixon: We appreciate that.

Representative O'Neill: Graham is excused?

The Chairman: Graham is excused until further notice, under the subpoena of this Committee right on. He'll have ample notice.

The hearings are adjourned.

(Whereupon, at 11:05 a.m., the hearings were adjourned).

[fol. 224] Reporter's Certificate to foregoing transcript. (omitted in printing).

[fol. 225]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF FLORIDA IN AND FOR LEON COUNTY

No. 16820

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE, Plaintiff,

VS.

THEODORE R. GIBSON, Respondent.

RETURN OF RULE TO SHOW CAUSE—Filed May 26, 1960

Comes now the respondent, Theodore R. Gibson, by his undersigned attorney and returns the rule to show cause and states as follows:

1.

The respondent admits that he was served with a subpoena which required him to appear before the Florida Legislative Investigation Committee on October 27, 1958, and that he was thereby required to bring with him certain records showing the membership lists and payments of dues to the Miami Branch of the National Association for the Advancement of Colored People. Respondent further admits that he pursuant to said subpoena did appear before the Legislative Investigation Committee and that he refused to produce the documents as commanded by the subpoena for reasons which he explained to the Legislative Investigation Committee.

2.

That the respondent is and at all times pertinent to the petition for rule to show cause and the order issued thereupon, was president of the Miami Branch of the National Association for the Advancement of Colored People. That it was in this capacity that he gained the custody of the records which the Florida Legislative Investigation Com-

mittee ordered him by subpoena to produce. That the Miami Branch of the National Association for the Advancement of Colored People is an affiliate of the National Association for the Advancement of Colored People, an organization [fol. 226] whose object and purpose are set forth in its Articles of Incorporation which are on file with the Secretary of State of the State of Florida and which have also been submitted to the Florida Legislative Investigation Committee which provide

... voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens; to advance the interests of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.

To ascertain and publish all facts bearing upon these subjects and to take lawful action thereon; together with any and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects.

3.

That the respondent as an officer and a member of the Miami Branch of the National Association for the Advancement of Colored People, along with other members thereof has for several years in Dade County, Florida, been engaged in a program to peacefully, by conciliation and litigation, to accomplish the object and purpose of the National Association for the Advancement of Colored People which has been set out above. That in Florida and elsewhere this peaceful and lawful program has been vigorously and violently opposed by those who espouse serious disagreement with it. That on divers and sundry occasions the life and home of the respondent have been threatened by those who oppose the movement of association. That on many occasions, other officers and members of the association have been threatened. That on occasions in the State of Florida threats against members have been made

good resulting in property damage, personal injury and loss of life. That in light of the extreme hostility which prevails against the membership, the organization and the program, exposure of the membership lists and contributors would unduly expose the member or contributor to violence, annoyance, intimidation, threats and economic sanctions simply because they seek the implementation of established constitutional principles with which others may [fol. 227] not agree.

## 4.

That the respondent has a right guaranteed by the Constitution of the United States to lawfully associate with others for the exchange of ideas. That this right of the respondent cannot be lawfully curtailed by any interference by any state authority unless the state be in position to show an overriding interest. That there has been no such bona fide showing of an overriding interest and therefore, the committee's compelling the production of association records is an abridgement of rights guaranteed by the Constitution of the United States.

## 5.

Further answering, the respondent says that there is absolutely no good faith reason for investigating the officers and members of the National Association for the Advancement of Colored People for bad faith or subversive activities and that the only reason so far advanced by the committee for demanding the records of the association has been to determine the extent of infiltration or penetration by subversive groups. That these same matters have been probed into by no lesser investigation authority than the Federal Bureau of Investigation and that on each such occasion, the National Association for the Advancement of Colored People has been given federal clearance. That such clearance has been made known to the public by the Federal Bureau of Investigation's chief, Mr. J. Edgar Hoover, in his book, "Masters of Deceit".

6.

That the National Association for the Advancement of Colored People is anti-communist and will not tolerate the participation of known or suspected subversive persons. That in the Annual National Convention of the National Association for the Advancement of Colored People the following resolution was adopted:

#### ANTI-COMMUNISM

Whereas, certain branches of the National Association for the Advancement of Colored People are being rocked by internal conflicts between groups who follow the Communist line and those who do not, which threaten to destroy the confidence of the public in the Association and which will inevitably result in its eventual disruption; and

[fol. 228] Whereas, it is apparent from numerous attacks by Communists in their official organs "The Daily Worker" and "Political Affairs" upon officials of the Association that there is a well-organized, nationwide conspiracy by Communists either to capture or split and wreck the NAACP; therefore be it

Resolved, that this Forty-First Convention of the National Association for the Advancement of Colored People go on record as unequivocally condemning attacks by Communists and their fellow-travelers upon the Association and its officials, and in order to safeguard the good name of the Association, promote and develop unity, eliminate internal ideological friction, increase the membership and build the necessary power effectively to wage the fight for civil rights, herewith, call upon, direct and instruct the National Board of Directors to appoint a committee to investigate and study the ideological composition and trends of the membership and leadership of the local units with a view to determining causes of the aforementioned conflicts, confusion and loss of membership; be it further

Resolved, that this Convention go on record as directing and instructing the Board of Directors to take the necessary action to eradicate such infiltration, and if necessary to suspend and reorganize, or lift the charter

and expel any unit, which, in the judgment of the Board of Directors, upon a basis of the findings of the aforementioned investigation and study of local units comes under Communist or other political control and combination.

That a resolution of similar import has been adopted in each annual convention since 1950 reaffirming the association's anti-communist stand, all of which was revealed to the investigating committee by the testimony of the respondent before the committee.

Further demonstrating the absence of the necessity for the exposure of the names of any of the members of the organization, respondent submits that in his testimony before the committee he minimized the danger of subversive infiltration of the Miami Branch of the National Association for the Advancement of Colored People who is a member of the Communist Party or any other subversive group. That all persons nominated for office are thoroughly investigated to determine their views on communism or subversion before being permitted to even seek office. Respondent submits that this practice of subjecting prospective officers to rigid scrutiny prevents any subversive from becoming a part of the policy making portion of the organization. The testimony of the respondent before the committee further shows that no investigation is made prior to admitting [fol. 229] one to membership, but that should any person who does not subscribe to the object and purposes of the organization or in any way have been guilty of participating in any subversive activities that upon such fact becoming known, such person shall be forthwith dismissed from the organization; that at no time has such drastic action been necessary in the Miami Branch of the National Association for the Advancement of Colored People.

Wherefore having fully answered the rule to show cause, the respondent prays that the same be dissolved.

Robert L. Carter, 20 W. 40th Street, New York, New York and G. E. Graves, Jr., 802 N.W. Second Avenue, Miami, Florida, Attorneys for Respondent. By: G. E. Graves, Jr., Of Counsel.

Certificate of service (omitted in printing).



[Vol. 231]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR LEON COUNTY

Case No. 16,821

FLORIDA LEGISLATIVE INVESTIGATIONS COMMITTEE

VS.

EDWARD T. GRAHAM

Case No. 16,820

FLORIDA LEGISLATIVE INVESTIGATIONS COMMITTEE

VS.

THEODORE GIBSON

### Transcript of Testimony

This cause coming on to be heard the 30th day of May, A. D. 1960, before the Honorable W. May Walker, Judge of said Court, at Tallahassee, Leon County, Florida, when and where the following testimony was introduced and proceedings had to-wit:

#### APPEARANCES:

Mr. Mark R. Hawes, Counsel for the Committee.

Mr. Tobias Sinton, Mr. Howard W. Dixon, Counsel for Defendant Graham.

Mr. Gratton E. Graves, Jr., Mr. Robert L. Carter, Counsel for Defendant Gibson.

Thereupon the following proceedings were had in Chambers, there being present the Court, Counsel, and the Reporter.

[Vol. 254] Thereupon the Hearing was adjourned to the court room whereupon the following proceedings were had in open court:



Mr. Simon: If your Honor please, I see that Senator Herrell is here. We are willing by stipulation of counsel to put him on out of turn and allow him to testify and be [fol. 255] excused.

The Court: Very well, so that the hearing may be expedited it may be appropriate for you to call your witnesses up to the bar of the court and be sworn for now.

Mr. Hawes: Your Honor this is Senator Herrell. He is here and I believe counsel has announced a willingness to—

The Court: Counsel has announced a willingness to hear the Senator now so as to save time.

Mr. Hawes: And he may be excused.

The Court: Yes. If you will call your witnesses, Mr. Simon.

Mr. Hawes: May we have an announcement of who these witnesses are?

Mr. Simon: On behalf of the defendant Graham, we have Harold Fleming, William Williams, Edward T. Graham, and we reserve the right to utilize all witnesses called by Gibson and of course the Senator W. C. Herrell.

The Court: Will other counsel call witnesses?

Mr. Carter: On behalf of the respondent Gibson we have Dr. Porter, Rev. Lowry, Mrs. Hurley, Mr. Saunders, Mrs. Terry, Father Gibson, Mr. Santzek and Mr. Humphrey.

Mr. Simon: We have one more witness if your Honor please, R. J. Strickland.

Thereupon the witnesses were sworn by the Court.

[fol. 256] Mr. Hawes: Your Honor, I would like to invoke the rule if the court please.

The Court: Very well, the rule has been invoked. Having been invoked, all witnesses will be required to repair outside the court room into a room which will be assigned to you by the Sheriff. Mr. Strickland, you know where the Grand Jury Room is and there remain until your name is called, at which time come immediately to the witness stand. In the meantime you should not discuss the case among yourselves nor permit anyone else to discuss the case with you save and except counsel who are participating in the trial of the case.

When you have testified, do not inform any other witness as to the testimony given or adduced by you on the witness

stand. I believe it has been agreed that Senator Herrell would be called first, so that being the case, will you have the witness chair now, Senator. All other witnesses will now retire.

Thereupon the witnesses withdrew from the court room and the following proceedings were had to-wit:

Mr. Carter: Of course the respondents themselves don't have to leave.

The Court: The respondents and those representing the Committee.

[fol. 257] Mr. Hawes: I would like to have Mr. Strickland assist me. I understand Mr. Simon has said he prefers him not to hear the testimony of Senator Herrell. I will agree to him being out of the court room during his testimony but I would like to have him during the balance of the witnesses' testimony.

Mr. Simon: No objection.

The Court: Very well.

Thereupon Mr. Strickland withdrew from the court room.

W. C. HERRELL, witness called by the respondents, being first duly sworn, testified as follows:

Direct examination.

By Mr. Simon:

Q. Will you please state your name and address?

A. W. C. Herrell, 173 Navar Drive, Miami Springs.

Mr. Hawes: Just a minute, at the outset, in order to keep the record straight the petitioner committee objects to any interrogation of Senator Herrell on the ground that any testimony that he could give would be completely immaterial and irrelevant to any issue in the case. We object to any question being propounded to the witness of course on [fol. 258] all the grounds that we have stated in our objections to the interrogatories propounded to the witness previously and all the grounds of our objections to the pro-

posal of taking his deposition and to require him to subject himself to the interrogation and on all the grounds that we have stated our objections to utilize the discovery procedure by going into the documentary files of the Committee and so that the witness may be advised, I think it proper for me to state to Mr. Herrell that your Honor has ruled that the limit of this interrogation—

Mr. Simon: Just a minute, Mr. Hawes. I think it is proper for the Court to instruct him on what the Court has ruled. All I have asked him, your Honor, so far is his name and I object to any further statements made by counsel because they are not proper at this time. I haven't asked him the first question and Mr. Hawes doesn't know what I plan to ask him.

The Court: All right, the point is well taken.

Mr. Hawes: I stand on the objection that I made as to any interrogation of the witness.

Mr. Simon: You say your name is W. C. Herrell?

A. Yes.

Q. Do you hold any elected position from Dade County, Florida to the Legislature of the State of Florida?

A. State Representative.

[fol. 259] Q. Did you hold that position during the month of November, 1959?

A. I did.

Q. Were you as a State Representative from Dade County, Florida, the Chairman of a Florida Legislative Investigation Committee created by Act of the Legislature under Chapter 59-207?

A. I was.

Q. Did you at that time acting in your capacity as Chairman of that Committee under your supervision and control require the attendance of one Edward T. Graham to appear and attend as a witness before that Committee?

A. Yes.

Q. Did you at that time and in place under your supervision and control and through the counsel for the Committee interrogate Edward T. Graham as to whether or not he was then and there presently a member of the National Association for the Advancement of Colored Persons?

Mr. Hawes: If your Honor please, I am going to object to any further pursuit of that line of interrogation because it is all irrelevant and improper to any issue in this case.

The Court: Objection is well taken. The record speaks for itself. The record has already been admitted by stipulation at the pre-trial conference. So that question has [fol. 260] already been foreclosed. The objection is well taken.

Mr. Simon: Mr. Herrell, what was your reason for asking Rev. Edward T. Graham whether he was then and there a member of the National Association for the Advancement of Colored People?

Mr. Hawes: Now if your Honor please, we object because that question is irrelevant and immaterial to any issue in the case and calls for a mere conclusion and opinion of the witness about a matter wholly irrelevant and immaterial.

The Court: Objection sustained.

Mr. Simon: Did you at that time and place have in the files of the Committee information as to whether or not Edward T. Graham was a Member of the National Association for the Advancement of Colored People?

Mr. Hawes: Now if your Honor please—

The Court: Objection sustained. Now Mr. Simon we have already had a pre-trial conference and the Court has definitely concluded and counsel has been advised that the only purpose for which testimony would be entertained would be regarding the deterring aspect if any.

Mr. Simon: If your Honor please, I thought it would be beneficial to counsel and the Court if I were able to make my proffer subsequent to the questions which were asked. If your Honor would prefer that I make my proffer in narrative form and if your Honor would indicate that I [fol. 261] would be prohibited from asking any questions at all concerning the reasons that the Committee had and the information contained in the Committee's file—

The Court: We have already had the pre-trial conference on those matters and the matter has been foreclosed.

Mr. Simon: May I make the following proffer at this time?

The Court: Very well.

Mr. Simon: That in response to the question as to the reasons for asking Edward T. Graham whether he was a member of the National Association for the Advancement of Colored People, that we would expect to elicit from this witness the fact that the Committee was interested in finding out whether or not there had been an infiltration of communists into the National Association for the Advancement of Colored People and no other reason, that the Committee had in its files information that Edward T. Graham was not and had not been for at least five years last past an officer or director of the National Association for the Advancement of Colored People; that the committee did not have in its files any information whatsoever that communists had infiltrated the National Association for the Advancement for Colored People; that with regard to the fourteen persons that Edward T. Graham was asked to identify, the Committee had no knowledge as to whether or not these persons were either members of the National [fol. 262] Association for the Advancement of Colored People or members of the communist party or any communist front organizations; that the Committee and its Chairman knew of the aims, purposes and methods of action of the National Association for the Advancement of Colored People and that these consisted of the obtaining of equal opportunities for all persons regardless of color; that he and the other members of the Committee disagreed with these purposes; that with regard to the persons Edward T. Graham was asked to identify, the Committee knew that most of the said witnesses were not then and had not been for five years last past and preceding the date of the convening of the Committee even residents of or resident within the state of Florida; that the Committee had separate information under oath, sworn to by the admitted president or chairman of the Miami Branch of the National Association for the Advancement of Colored People, testimony, sworn testimony to the effect that not one of the said fourteen persons about whom Edward T. Graham was interrogated was then or had been for some five years next preceding the meeting of the committee, had not been a member of the National Association for the Advancement of Colored People.

That is what we would expect to elicit from the witness if your Honor please.

The Court: The Court is of the opinion that the proffer [fol. 263] should be denied on the grounds that the testimony proffered is immaterial and irrelevant.

On the further grounds that the matters involved in such proffer are matters which were foreclosed at the pre-trial conference so the objection is sustained.

Mr. Hawes: Now if your Honor please, Senator Herrell is here and if they have any questions to propound with regard to the subject matter that the court has limited the testimony to he is here. If not we would ask that he be excused so that he may return to his business. Are there any further questions?

Mr. Simon: No objection on the part of the defendant Graham.

The Court: Very well.

Mr. Hawes: May Mr. Herrell be excused from further attendance, your Honor?

The Court: Very well.

Thereupon, the witness was excused and withdrew from the court room.

Mr. Hawes: May we know which defendant is going to proceed?

The Court: Mr. Simon, on behalf of the respondent Graham have you rested?

Mr. Simon: No, sir, we called him out of turn.

Mr. Carter: Gibson is going to proceed first. We plan [fol. 264] to call our witnesses and as a courtesy to the Senator we let him testify first.

The Court: Very well.

Mr. Carter: Father Gibson, would you take the stand.



reason of his involvement in the problems of the negro community as I have just stated, has had his life threatened, [fol. 270] has had crosses burned on his lawn, has had members of his family threatened by anonymous and mysterious phone calls, has had his church threatened to be bombed, and assuming that this person whom I have just described is required to reveal his membership in the National Association for the Advancement of Colored People, what effects do you understand would probably result from this forced revelation of membership in the National Association for the Advancement of Colored People?

Mr. Hawes: If your Honor please, we object because the question is predicated on matters not in evidence. It calls for a mere conclusion and opinion of the witness on matters that he is not actually qualified to pass.

Mr. Simon: If I may be permitted your Honor, I understand that the matters about which I have framed this hypothetical question are not yet in evidence but we promise to tie it in with the evidence to be submitted in the testimony of Edward T. Graham. So far as this being a conclusion or opinion, I am free to admit that as well. I believe however, that your Honor will recognize this man is more than qualified as being an expert on this subject by reason of his present testimony and should be permitted to answer the hypothetical question addressed to an expert.

The Court: Do you contend that any such person as hypothesized was called as a witness before the Committee? [fol. 271] Mr. Simon: Yes, sir, Edward T. Graham. Go ahead.

Witness: Sir, if such a man existed and I think there are such men, his life wouldn't be worth a nickel. He will get all sorts of threats and in all probability end up losing his life if he isn't careful.

Mr. Simon: No further questions.

The Court: Very well.



## Cross examination.

By Mr. Hawes:

Q. Reverend, I believe that you said that in your testimony at the outset that some sort of threat had been made on your life as the result of this hearing that had been set for trial before Judge Walker here and was postponed because of my illness at the time?

A. No, I did not say that, sir. I said that threats had been made upon my life because of my identity publicly so with the NAACP and I pointed out specifically that when we were due here for the hearing before that at that time, my life had been threatened and my home was threatened to be bombed and that can be borne out substantially by the Sheriff's Department of Dade County.

Q. In what way was that threat conveyed to you, Reverend?

A. In the form of telephone.

Q. Telephone call to you personally?

A. Telephone call once to me and once to my secretary.

Q. Who is your secretary, Reverend?

[fol. 272] A. Miss Virginia Thompson.

Q. Where does she live?

A. 37 I think it's 3787 Washington Avenue, Miami, Florida. The address may be incorrect but it is Washington Avenue I know, 3700 block.

Q. Do you know when she received this telephone call?

A. The call was received the very day we were here and when we got back, I received a similar call myself.

Q. Of course all you know about the call that she received is what she told you about it, is that true?

A. Yes, and also by finding the officers from the Sheriff's Department surrounding my home.

Q. All right now you say when you got home you found or received a telephone call yourself?

A. Yes.

Q. Where were you when you received that call?

A. At my office.

Q. That is located where?

A. 3481 Hibiscus Street in Miami.

Q. Who was calling you?

A. The person did not identify himself.

Q. Was it a man?

A. It was a man.

Q. What was the nature of that conversation, Reverend?

A. That naturally, "Nigger, you want integration? We're [fol. 273] going to bomb your house" and of course I take the usual position, "Come on".

Q. You told him to go ahead and do it?

A. Yes, if that's what he wants to do, I can't stop him.

Q. Now did you call the Sheriff's Office in Dade County in relation to that?

A. Yes, I called the Sheriff's Department and a man came out whose name I don't hardly recall, he gave me his card and said that if I should see anyone around my house that I had any doubt of just to call the Sheriff's Department, call him, that is, and he gave me the number on the card and so on that they would be right out.

Q. Of course, your house wasn't bombed, was it, Reverend?

A. No, but there was no assurance it wouldn't have been bombed.

Q. I say it hasn't been but you say you have no assurance that it wouldn't have been?

A. That's right, and it may yet be for all I know.

Q. You don't know the identity of the man who called you?

A. No.

Q. Now that happened this year, didn't it, Reverend?

A. No, that was last year, wasn't it?

Q. Was it last year, 1959?

A. I do not recall the date. You would know that better than I—whatever that date was.

[fol. 274] Q. Was it at the time I was ill and the hearing was postponed up here in this state?

A. Yes.

Mr. Hawes: I think the record will show that was in January.

Mr. Simon: February.

Mr. Hawes: February, 1960.

Q. Now Reverend, that was two calls, one to your secretary and one to yourself. Have you had any other threatening calls, you say?

A. Oh, yes, one Sunday morning last year right after church was ended, a man, male voice called me and said they were coming over to get me and I said, "For what". He says, "Because we're tired of you so and so niggers wanting to enter our schools" and I said, "You come right on. I have a big thirty-eight sitting right in my desk" and I said, "I'm not going anywhere" and I stayed right there.

Q. You haven't heard any more out of that?

A. No, I haven't heard any more.

Q. Reverend, how long has it been public information and in the press of Dade County that you were a member and officer of the NAACP?

A. I have been an officer for at least five years and I assume the papers have carried right along my identity.

Q. Well you have seen public stories in the press of [fol. 275] Dade County to the effect that you were an officer and member of the NAACP for at least five years?

A. I have.

Q. During that time, you have had these several telephone calls but no actual violence has been demonstrated against you personally, has it?

A. No.

Q. Now who is the person you referred to as one Berkman?

A. Alvin Berkman.

Q. Would you give me his first name?

A. Alvin Berkman.

Q. Where does he live?

A. He now lives in Arizona.

Q. Did he at one time live in Dade County?

A. Yes.

Q. Do you know that man?

A. I knew him well.

Q. Was he a colored man?

A. He was a white man.

Q. He was a white man?

A. Yes.

Q. How do you know that?

A. Because I, sir, I lived in Dade County for fourteen years. I was born and reared in Dade County so if anybody would know anything about the county, I think I would be something of an authority about the county as to where people lived.

Q. You don't know where everybody lived in Dade County?

A. I do not but I know where Frank Legree lived.

Q. Do you know this Frank Legree?

A. I do so.

Q. Did you know him at the time you are testifying about?

A. I do sir, I did.

Q. How long have you known him?

A. I have known him about a period of six months prior to this incident.

Q. Prior to the incident that you are testifying about?

A. Yes.

Q. Now you say that he bought a house?

A. Yes.

Q. In a once white neighborhood?

A. Yes.

Q. I am not questioning your knowledge of whether or not there was a once white neighborhood or not but what is the basis of your information that he bought that house? [fol. 280] A. The basis of my information was that he produced a contract and he proceeded to live in the neighborhood.

Q. Who did he produce the contract to?

A. I saw the contract because when the trouble began to stir he came to the NAACP.

Q. Did you talk to him personally?

A. Yes.

Q. About this incident?

A. I talked with him, talked with his wife.

Q. Did he show you this contract?

A. Yes.

Q. You read it?

A. Yes.

Q. All right, go ahead now.

A. I read the contract but what was in the contract I don't recall. I mean it didn't mean that much to me then.

Q. He moved into what had previously been an all white block or neighborhood?

A. Yes.

Q. What is the basis of your information with regard to the other matters concerning Frank Legree that you testified to?

A. Well I was present on the Sunday when a group of white people marched to and fro on the sidewalk in front of Frank Legree's home and on, those white people carried banners on their shoulders to the effect, "Nigger, why did you move out here. Nigger, why don't you go back to [fol. 281] Tennessee. Nigger, why don't you go back to where you lived" and I was one of the persons along with the counsel at the table there who went and swore out a warrant and had the man prosecuted in court the next morning, in the city court, either the next morning or anyway a day or two thereafter and I think that is public record.

Q. Who was it you swore the warrant out for?

A. We swore the warrant out, we didn't swear the warrant out for any particular individual since there were several of them. We went and had it, we went and talked with the person in charge of the police department on that Sunday afternoon. It so happened they gave us the run around, what couldn't be done and you can't arrest these men and so the counsel was with me at the time and he had to inform them that he was an attorney and knew what the law was and they did not swear out a warrant but they simply took, they simply got in the car, several cars and went out there, drove around that block several times and then stopped the car and called to each person who was carrying a banner, had them to get into the car, then took them down to the police headquarters and got their respective names and booked each individual for molesting that man from the use of his house.

Q. The police went out there and picked up everybody who was carrying a banner around the Legree home and booked them on what charge?



A. Well, I don't remember the legal terminology. Any [fol. 282] way they, I remember the Judge saying to them about disturbing this man in the peaceful living of his home, and, "If I catch you back out there again, that I am going to severely punish you" or something to that effect. I know that that prohibited their demonstration.

Q. That stopped that demonstration around the Legree house?

A. Yes.

Q. All right, now, you said something in your other testimony in answer to a question from your own counsel about something about burning some crosses on the Legree property there. What was your information in regards to that? Were you there when that was done?

A. No, no, I was not.

Mr. Graves: May it please the Court, the witness objects to a double question. He would like to have the opportunity to answer the first question which was propounded to him before going on to another one. The first question was what does he know about the burning of the cross at the Legree home, if I am correct, I would like to have him answer that question.

Mr. Hawes: If your Honor please, I am conducting this interrogation. Unless the Court puts me in a strait-jacket, I am going to continue. Reverend, you have already testified you were not present when the cross was burned on the Legree property there. What then is the nature of the information that you were telling the court about in [fol. 283] regard to that? Is it based on something that somebody told you?

Mr. Graves: That is not the question which counsel propounded.

The Court: Counsel has a right to conduct his own cross examination. This is not direct. This is cross examination so the witness can speak for himself. The objection will be overruled.

A. No, I was not there at the burning of the cross.

By Mr. Hawes:

Q. My question then was was the information you related to the court earlier based on what you had been told about that instance by someone else?

A. Let's see, I think, if I remember correctly, the information was told to me by Frank Legree himself and by a man who had witnessed the cross burning and was responsible for catching the people in the very act.

Q. In other words, you were told about that incident by Frank Legree and another person who purportedly saw it?

A. Yes.

Q. That is the basis of your information concerning the cross burning?

A. Plus the court record reveals and also the cross that was burned was exhibited in the court room at the hearing, at the trial.

Q. Well that is the cross that somebody said was burned there?

[fol. 284] A. The cross that was identified by the police officer as being the cross.

Q. Now of course you don't have that court record with you, do you Reverend?

A. No.

Q. And you know Frank Legree, is he in Tallahassee today?

A. No, sir, not to my knowledge.

Q. Is he living in Dade County now?

A. Let me say I do not know where Frank Legree is at this time.

Q. Well, did you seek to locate him?

A. No, sir, I didn't think that was necessary.

Q. As far as you know is Legree still in that same home now?

A. I do not know.

Q. You just don't know. You haven't attempted to find out?

A. No, I don't know.

Q. Now, Reverend, you said that some people told you that the cross was burned on the lawn of Frank Legree and you told us that you saw some people marching in front



THEODORE R. GIBSON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. For the purpose of the record, will you give your name and address?

A. My name is Rev. Theodore R. Gibson. I reside at 14680 Harrison Street, Miami, Florida.

Q. Father Gibson, do you hold any position in the Miami Branch of the NAACP?

A. I do.

Q. What is that?

A. I am the president of the Miami Branch.

Q. How long have you been president?

A. For the last five years.

Q. How long have you been active in the NAACP in Miami?

A. For no less than ten years.

Q. Now Father Gibson, the records for the Committee which is a part of the record in this case shows that you were custodian of the membership list of the National Association [fol. 265] for the Advancement of Colored People in Miami, is that correct?

A. Yes.

Q. Now the record also discloses that you refused to bring that list, physically under orders to the Committee, is that correct?

A. That is correct.

Q. Would you tell the court why you have refused to produce the records?

A. Well I refused to produce the records for two reasons. In the first place that in the state of Florida and in the county of Dade and in the south generally, there has been severe hostility and bitterness certainly toward the organization of NAACP or any person or persons identified with the organization. Certainly, it is a known fact as a matter of fact, I know it personally, that anyone who is publicly identified with the NAACP for instance, myself, his life is

either threatened or he loses his job. In the case of the Berkman's who worked for an oil outfit and they had to leave because they lost their job or in the case of Frank Legree whose home was threatened and crosses burned in front of it—

Mr. Hawes: What was the first name of the man you mentioned?

(sic) catened to be bombed when I was due up here the last time and you were sick. That was the, I was the first person. The second person was Alvin Berkman, who worked for Shaw Brothers and lost his job. Frank Legree, whose [fol. 266] home was threatened to be bombed and crosses burned in front of it. And there are several other people whose name I may not recall at the present but intimidation is there and that's why I have not turned over the records because I know that it would be to the detriment of the organization since it has deterred our membership growth—

Mr. Hawes: Wait a minute, Reverend. If your Honor please, I don't want to unduly object. I want to object and move to strike all of this evidence that is being put in here by this witness of a hearsay nature, conclusions and opinions. I want to, if your Honor please, ask that the witness be instructed to limit his testimony to what he knows factually first hand about and if his testimony with regard to Legree and Berkman is mere assumption and hearsay or what he has been told by others, I would like to have all that stricken. I move to strike it and ask that the witness be instructed to confine his statements to factual information of his own knowledge.

The Court: It has not been developed yet whether it is hearsay or first hand information. He testified he was testifying on the basis of first hand information.

Mr. Hawes: I will go into that, but I want you to instruct him to not go into hearsay testimony, please sir.

The Court: That request is well taken. The motion is well taken. You should not deal in hearsay matters. You should deal with direct matters. Deal with information [fol. 267] within your own knowledge.

By Mr. Carter:

Q. You are aware of that, are you not?

A. Your Honor, I am testifying to knowledge, not to hearsay.

Q. Now, Father Gibson, you are conversant with the policy of the NAACP Nationally and Locally with respect to communist infiltration?

A. I am, sir.

Q. What is that policy?

A. The policy of the NAACP locally and nationally is that no person who is a known communist can be or is permitted to maintain membership in the NAACP and ever since the Boston Convention.

Q. When was that?

A. That I think was 1950, the NAACP established and reiterated at each convention by way of resolution that no person who is a known communist can be or is permitted to be a member of the NAACP.

Q. Have procedures been established for carrying out that policy?

A. Yes, procedures have been established.

Q. Have you had to invoke that procedure in the Miami Branch in the last five years?

A. No, we have never had any complaint or even accusation to that effect.

Q. Have you known of it being invoked during any period [fol. 268] of time when you have been a member of the NAACP?

A. No.

Mr. Carter: No further questions.

Mr. Simon: Your Honor, what procedure do you want to establish. I have some questions I want to ask this witness.

Mr. Hawes: You go right ahead and I will wait.

By Mr. Simon:

Q. Do you know any of the following named persons to be members of the National Association for the Advance-

ment of Colored People in Miami or to have been members at any time during your familiarity with the organization: Augusta Birnberg, Edward E. Waller, James Nimmo, Abe Sorkin, Charles Marks, Myron Marks, Leo Sheiner, Charles Smolikoff, Tess Kantor, Leah Adler Benomousky, Louis Papp, Manny Grafs, Bobbie Grafs, and Michael Santzek?

Mr. Hawes: Just a minute, Reverend. If your Honor please, I object to that question because it is irrelevant and immaterial and outside of the issues that your Honor has already ruled that testimony would be limited to.

The Court: The Court is of the opinion that the objection is well founded so far as this hearing is concerned, even if they are all communists or no single communist member had ever become a member of the NAACP, the Court is of the opinion it would be immaterial. In other [fol. 269] words, it is not a question of communism here. The question of communism is a matter the Committee was dealing with.

Mr. Simon: If your Honor please, I am well aware of your Honor's ruling and I asked the question. I expected the objection to be made and expect your Honor to be consistent and sustain the objection. However I feel this is the manner in which I should perfect my records and at this time I should like permission of the court to proffer the fact that the answer to that, if the witness were allowed to answer would be no, he has not known them to be members of the NAACP in Miami during the ten years he has been associated with the organization.

The Court: Very well. To which proffer I assume counsel will object.

Mr. Hawes: Yes, sir, I will object.

The Court: It will be denied.

Mr. Simon: I have one other question. Father Gibson, I would like you to assume if you will the circumstances of a negro clergyman living in the City of Miami, not identified with the National Association for the Advancement of Colored People but active nevertheless in the problems besetting the negro community and an active advocate of equal opportunity for all persons regardless of color, who by

Q. I believe you said something about him losing his job?

A. Yes.

Q. Would you tell me what you know now, not what you have been told, but what you know about that?

[fol. 276] A. Well I can only report based on what I have read in the communications sent to him.

Q. Where did you read this?

A. The company wrote him a letter and he showed me the letter.

Q. What company wrote him this letter?

A. Shaw Brothers.

Q. What is the nature of their business?

A. Petroleum, gas, oil business.

Q. Where was the headquarters out of which that letter emanated, do you remember?

A. Dade County.

Q. Dade County headquarters for the company?

A. Yes.

Q. And the letter you say was addressed to Berkman?

A. Alvin Berkman.

Q. What did the letter say?

A. Well because of his association with the NAACP they wished to discontinue service.

Q. When was this, Reverend?

A. This has been about two and a half, three years ago.

Q. Now do you know how Alvin Berkman's affiliation with the NAACP was revealed, if it was?

A. Well Alvin Berkman came to all of the meetings. He participated in all of our activities. There was no secrecy [fol. 277] about his identification or his affiliation.

Q. Well that was true of all the people who attended all of your meetings and who were in the same position as Alvin Berkman then, wasn't it?

A. I didn't follow that.

Q. You say that Alvin Berkman attended all of your meetings and participated openly in your activities, NAACP activities and that there wasn't any secrecy about his participation, isn't that what you said?

A. That's right.

Q. Well that is true, is it not of the general membership of the NAACP?



A. Not all of the people are as unafraid as Alvin Berkman was. I don't think so. I am sure of that.

Q. Well a lot of your members go to local meetings, don't they?

A. They do.

Q. And participate freely and publicly in the meetings?

A. They do.

Q. And some of them I assume don't do that from what you say?

A. That's true.

Q. Some of them I assume are members but do not attend the meetings that are public in nature, is that what you are telling me?

[fol. 278] A. Well that's true of any organization. Some of them will not and some of them will.

Q. All right now this man showed you what he said was a letter from his employer?

A. Yes.

Q. But you never verified from the employer whether or not that was an authentic letter, did you?

A. I did not because I trusted the man and he had no reason to lie to me and I would do that by anybody that I trust.

Q. And Berkman showed you that letter and told you that he had been fired?

A. The letter stated that.

Q. Because of what was stated in the letter?

A. The letter was there.

Q. And that is the basis of your information in regard to your testimony about Berkman?

A. Yes.

Q. Do you remember whose signature was on that letter?

A. No.

Q. Now you have said something about a man named Frank Legree?

A. Yes.

Q. Will you tell me what you know about Frank Legree in relation to what you have said about it, not what somebody has told you but what you actually know about it?

[fol. 279] A. Frank Legree bought a home in a once occupied all white neighborhood and when we—

of his house and that the trouble out there wasn't in regard to his membership in the NAACP but it was in regard to his having moved into a previously all white neighborhood, wasn't it?

A. He was a member of the NAACP. I doubt it, perhaps, [fol. 285] maybe, it was not because he was a member of the NAACP but it was an effort to intimidate him.

Q. For moving into that neighborhood?

A. Yes.

Q. There wasn't anything on any of those banners you saw those men parading there with that had anything to say about the NAACP?

A. Sir, I think it is an admitted fact and I think even the white people say this that any negro by and large who speaking his rights is prompted by the NAACP, I mean you know the story.

Q. I say you didn't see any reference to the NAACP there at that demonstration though, did you?

A. But it was implied.

Q. It was implied?

A. Yes.

The Court: I think before we lose a lot of time I am going to have to rule now that the burning of the cross is immaterial and irrelevant and the incident about the colored man moving into the white residential section is immaterial and irrelevant because the point involved here is whether belonging to the NAACP Organization would have deterrent effect. This court is not concerned with the racial question at all.

Mr. Hawes: All right, sir. Then your Honor grants in effect my motion to strike testimony concerning that incident [fol. 286] of Frank Legree and the cross burning?

The Court: That is correct. The motion is sustained. We can get far afield and there would be no limit anywhere. The deterrent effect relates to membership, not burning crosses or riots or any argument between races. We are not concerned with those matters at all.

Witness: Your Honor, this may not be factual thinking but usually when anybody is attacked, the first thing they say to you, "I know that NAACP must put you up to do this".



The Court: That is not an issue in the case here, Reverend. That is not an issue at all.

By Mr. Hawes:

Q. Now, Reverend, you said a few minutes ago in answer to a question by Mr. Simon here that the disclosure of a person supposed to be Reverend Graham in his position, that the disclosure of his membership in the NAACP would put him in a position to use your words, where his life would not be worth a nickel or a plugged nickel. Do you remember saying that?

A. Words to that effect, yes, sir.

Q. You said that, didn't you?

A. Yes.

Q. Now you know Reverend Graham as a matter of fact, don't you?

The Court: One minute, Mr. Hawes. The Court made [fol. 287] an observation a minute ago that might confuse the Reverend. Any unpopularity or any hate or any deterring effect that might be based upon membership, that is perfectly agreeable but any arguments or dissension not based upon membership in the NAACP is immaterial. I want to point out the incident about the colored man moving into a white residential section was not predicated upon membership in the NAACP Organization so therefore the Court ruled that immaterial and irrelevant but any testimony about unpopularity or any deterring result by reason of membership in the NAACP, that is material and relevant. Very well, you may proceed with your cross examination.

Mr. Hawes: Thank you, your Honor.

Q. What did you mean, Reverend, by that statement that his life wouldn't be worth a plugged nickel or a nickel or whatever your words were?

A. I mean exactly what I said that I wouldn't give a nickel for a man's life who is so described or similarly described because I am a good example of how you can be intimidated and people call you and use abusive language, people threatening your life. You don't know when, and

one thing I didn't say and I am glad you asked this question again, the letters that you will get that people never sign their names to them.

Q. Do you have any such anonymous letters now?  
[fol. 288] A. Not here. As a matter of fact, I destroyed them all.

Q. Destroyed them all?

A. Yes.

Q. I see. Of course you know the Reverend Graham, don't you?

A. I do sir.

Q. How long have you known him?

A. I have known the Reverend Mr. Graham for at least fourteen years.

Q. At least fourteen years in Dade County?

A. Yes.

Q. Now you have said that the disclosure of membership in the NAACP in this case would render his life not worth a plugged nickel. I ask you isn't it a fact and don't you know it is a fact that it has been publicly disclosed in the press of Dade County that he was not only a member but a high official of the NAACP for many years.

Mr. Simon: To which I respectfully object on the ground that the evidence to that effect is not in the record and is not a basis for a hypothetical question addressed to the witness. It calls for a conclusion and opinion of the witness based upon matters not contained in the record.

The Court: The Court is of the opinion that the question propounded is within the purview of cross examination, [fol. 289] the cross examination within the purview of direct, asking a question of—

Mr. Hawes: Whether the witness knew it?

The Court: Well, whether deterring effect may reasonably follow the known membership. The objection is overruled.

Mr. Simon: If your Honor please, the question if your Honor would care to have it read back asked him if he didn't know that the membership of Edward T. Graham was publicly announced in the newspapers in Dade County which I maintain if your Honor please, is not a matter

before the Court at this time and there is no evidence to that effect in the record.

The Court: Objection overruled.

Mr. Hawes: Would you answer that question, Reverend?

Witness: What was the question?

The Court: Read the question.

Reporter: Now you have said that the disclosure of membership in the NAACP in this case would render his life not worth a plugged nickel. I ask you isn't it a fact and don't you know it is a fact that it has been publicly disclosed in the press of Dade County that he was not only a member but a high official of the NAACP for many years?

A. I don't think his membership has been, I don't think publicly identified but I think it was alleged, you see, I have [fol. 290] been the president and certainly for the last five years, all of the officers of the NAACP I would know. I can't—

By Mr. Hawes:

Q. Reverend, do you remember that the Florida Legislative Investigations Committee held a hearing in Dade County in 1957 and 1958?

A. Yes, I assume those dates are right.

Q. Isn't it true that Reverend Graham and yourself were subpoenaed as witnesses down there before the Committee at that time?

A. I was subpoenaed as a witness because I was president of the NAACP. I do not know why the Reverend Graham was subpoenaed.

Q. Do you recall whether or not there was a time when the witnesses who belonged to the NAACP freely disclosed to this Committee their membership before they finally started resisting that information? Do you have any knowledge of that yourself?

A. The Committee, which Committee, sir?

Q. The Committee that is a party to this investigation, the Legislative Investigations Committee.

A. I don't think the Reverend Mr. Graham even identified himself as a—

Q. You don't have any recollection of that if it ever happened?

A. I don't think he identified himself. I don't know.

Q. I am handing you what purports to be—

Mr. Simon: I would respectfully request any documents [fol. 291] handed to the witness be identified for the record.

Mr. Hawes: I am handing here what purports to be—

Mr. Simon: I have an objection before the Court.

The Court: Identify the instrument.

Mr. Hawes: I am handing you what purports to be a resolution, adoption of resolution of the NAACP in 1953, and ask you if you find your signature on that document?

Mr. Carter: Before you answer the question, I would like to see the document.

By Mr. Hawes:

Q. Do you see your signature on that document, Reverend?

A. I see my signature, yes.

Q. Now do you see the date of that document. I am not asking you what it is, just what is the date of it?

A. 26th day of January, 1954.

Q. 1954?

A. Yes.

Q. Now I am handing you another document and ask you if you recognize the stationery on which that—

Mr. Simon: If your Honor please, could we have the first document identified by a number and letter?

The Court: Very well, let the two documents be separately identified so that the record may properly show identification.

Mr. Simon: Would that be Plaintiff's 1A for identification [fol. 292]?

Mr. Hawes: This first one, the association resolution, that is what it is, isn't it, Reverend, a resolution of your association in regards to a bank account?

Mr. Simon: I will object if your Honor please.

Mr. Hawes: I am going to identify it now. I am going to do that.

Mr. Simon: I have a different objection, based on that resolution that that would be a document which would speak for itself, if it were in evidence and the question as to what it is is best identified by the introduction of the

document into evidence. I respectfully submit that the question is improper on the grounds that it refers to a document not in evidence.

Mr. Hawes: My question is—

The Court: The Court understands the question was designed to identify the instrument. Identify the document.

Mr. Simon: I respectfully submit that he is now asking questions about the document.

The Court: What is it, a warranty deed? It may be a decree of adoption.

By Mr. Hawes:

Q. Is that a resolution of your Miami Branch of NAACP regarding a bank account of the NAACP?

[fol. 293] A. Yes.

Q. And it contains your signature as an officer of the NAACP?

A. Yes.

Q. Do you recognize the signature of any other officer there?

A. Ruth Willis Perry.

Q. And who else?

Mr. Simon: I will object on the same grounds.

Mr. Hawes: I am just asking him if he recognizes it.

The Court: Objection sustained.

Mr. Hawes: All right, would you mark this, please?

Thereupon said documents were marked Petitioner's Exhibits 1 and 2 for identification.

Mr. Carter: I want to object to this document because I assume it is being tendered to the record for identification. I want to object to it on the ground that the witness there is no signature of the witness on it, that the witness is in no position to identify this document at all.

The Court: There has been no proffer yet.

By Mr. Hawes:

Q. I hand you a document that has been marked Petitioner's Exhibit 2 for identification and ask you to look at [fol. 294] the letterhead of that stationery. I am not inter-

ested in the contents of that letter as such and the date of the letter, and first I will ask you what date appears on that letter?

A. June 23, 1953.

Q. Now do you recognize the letterhead on that letter, the stationery, is it familiar to you?

A. Well the name is.

Mr. Simon: I believe the witness should be instructed the question calls for a yes or no answer. I am going to object to the description of the contents of that letter.

The Court: The point is well taken.

By Mr. Hawes:

Q. Do you recognize the letterhead, Reverend?

A. Yes, I do.

Q. What is it?

Mr. Simon: I object on the ground that the document is not in evidence at this time. The document, if in evidence, would speak for itself.

Mr. Hawes: I want to identify it, your Honor. The witness said he recognized it.

Mr. Carter: The witness said he recognizes the name.

The Court: It is offered for identification as Petitioner's Exhibit 2 for identification. The document has already been identified.

[fol. 295] Mr. Hawes: All right. You recognize that, you have stated that already?

A. The name.

Mr. Carter: Wait a minute. I think on this document, the question was did he recognize the name at the top of the document. He said yes. He was asked to tell what the name was and an objection was made. There was no statement by this witness that he recognized that document and in so far as Mr. Hawes making that statement, I think that it should be stricken.

The Court: The record will speak for itself whether he said he recognized it or didn't recognize it.



By Mr. Hawes:

Q. Now, Reverend, in June, 1953, can you tell me whether or not the Reverend Edward T. Graham was openly carried on the official letterhead of the NAACP in the Miami Branch as first vice president of that organization?

Mr. Simon: To which I will object on the ground that it is immaterial and irrelevant to the issues raised by the pleadings in this matter.

Mr. Hawes: Your Honor, the purpose of this interrogation is to go into the validity or the correctness of the witness's opinion that Mr. Reverend Graham's *title wouldn't* be worth a plugged nickel if it was known he was a member of the NAACP.

[fol. 296] The Court: Objection overruled.

Mr. Hawes: Would you answer that question, Reverend?

Mr. Carter: If you know?

A. I do not know what position he had in 1953. I do not know.

By Mr. Hawes:

Q. You don't know whether then this is a photographic copy of the correct and true letterhead of that organization in that year?

A. Sir, I said I did not know what position he held at that time. I was not an officer. I was a member of it.

Q. You were a member?

A. Yes.

Q. Do you recognize the person, Blanch McKinney, do you know her?

A. No, I don't know Blanch.

Q. You knew Dr. Hawkins?

A. Yes, I know him now.

Q. You know him now?

A. Yes.

Q. Is it your statement that you don't know whether or not Reverend Graham was known as first vice president?

A. My statement categorically is that I do not know who the officers were in 1953.

[fol. 297] Q. You don't know now?



A. I do not know who were the officers in 1953.

Q. Did you tell me that you did or did not know of any association of Edward T. Graham in any official standing, that is as an officer, since you have become president. I believe you became president about five years ago, you said?

A. About five, five years, thereabouts.

Q. Did I understand you to say that you knew of no official position he had with the NAACP within that time?

A. I believe that's right.

Q. I believe you stated Reverend, that as far as you knew his membership, if it existed was not publicly known in Dade County over the last five years?

A. I don't think I said that. I said we were talking about, you asked me wasn't it true that it was publicly known that he was a vice president of something and I told you not to my knowledge.

Q. Well, would you state whether or not his membership in the NAACP has been publicly known in Dade County for over five years?

A. I do not know, sir.

Q. You don't know?

A. I do not know. There again that would have to be hearsay.

Mr. Hawes: No further questions.

Redirect examination.

By Mr. Simon:

[fol. 298]— Q. Reverend Gibson, do you or did you know a man by the name of Harry Moore?

A. Harry T. Moore, yes, I do.

Q. Did you know his wife?

A. I did, sir.

Q. Is he presently dead or alive?

A. He is dead, at least I attended the funeral.

Q. When did he die?

A. Oh, on Christmas Eve in, I don't remember the year.

Q. About four or five—

A. Christmas Day, right around.

Q. Was that about 1952 or 1953?

A. Somewhere thereabouts.

Q. At the time of his death, did he hold any office in the National Association for the Advancement of Colored People in the state of Florida?

A. He was the field secretary.

Q. How did he die?

Mr. Hawes: Wait a minute now. I don't want any hearsay in here and I ask that the witness be instructed not to answer with any hearsay or anything that has been told but only his first hand information and knowledge, your Honor.

The Court: It should be so understood.

Mr. Simon: Do you know how he died?

A. I was not there.

[fol. 299] Mr. Simon: If your Honor please, I respectfully submit there is an exception to the hearsay rule based upon matters of public interest and public knowledge which I will be pleased to cite the law to your Honor if it is required. If your Honor will not let this witness testify then I will—

The Court: I am not of the opinion that would constitute an exception in proceedings of this kind.

Mr. Simon: Then if your Honor please, I would proffer the fact, I would like to proffer at this time that if permitted to testify, this witness would testify to the fact that Harry T. Moore—

Mr. Hawes: Wait a minute, if your Honor please. I object to any proffer on something this witness says he cannot testify to if it is lawful, legal, first hand information.

Mr. Simon: How can you object to a proffer?

Mr. Hawes: I am objecting to a proffer before this court to something the witness says he cannot testify to.

Mr. Simon: I respectfully submit it is an exception to the hearsay rule.

The Court: The Court is of the opinion it is not. Objection sustained.

Mr. Simon: May I make a proffer?

The Court: Proffer by hearsay?

[fol. 300] Mr. Simon: Yes, sir. I will proffer that if permitted to testify this witness would testify that he from newspaper accounts and information he has received from various sources, that Harry T. Moore was killed by a bomb blast at his home in December of 1952 or 1953 with his wife.

The Court: The proffer is denied.

Mr. Simon: I have no further questions.

The Court: Very well. Have you concluded this witness?

Mr. Carter: One question I forgot to ask Father Gibson. Do you know, are you able to, are you familiar with the number of members in the Miami Branch, I mean just the round number?

A. Yes.

Q. Over the last three or four years, has that membership increased or fallen?

A. It has decreased considerably and as we go out on membership drives the excuse given for not becoming a—

Mr. Hawes: Just a minute, if your Honor please. I think we are getting far into hearsay which I object to.

Mr. Carter: I think if your Honor please that this is—

The Court: The court is of the opinion that the laws of evidence are applicable. There is no point in having a [fol. 301] trial of a lawsuit unless we observe the rules of evidence, so the objection is sustained.

By Mr. Carter:

Q. Father Gibson, have you during the last three or four years, has it been your practice to attempt to sell memberships in the NAACP?

A. Yes.

Q. Obtain memberships in the association?

A. Yes, indeed.

Q. Have you had any difficulty?

A. Yes, indeed.

Q. Based upon your having attempted to secure memberships and so forth during this period of time, what is your conclusion as to the basis for this difficulty?

A. I can say what was said to me.

Mr. Hawes: Wait a minute, Reverend. I object to any conclusion or opinion or hearsay from the witness.

The Court: Unless some basis is shown for the exception to the hearsay rule. There is no basis shown now.

Mr. Carter: This witness has gone out and secured memberships. He is talking from personal experience with respect to his membership over the period of time. Obviously, we can't produce the people but he goes and secures membership. He is not telling what somebody who hasn't been securing has told him. This is personal experience in [fol. 302] respect to obtaining membership in the association.

The Court: Purely hearsay. The objection is sustained.

By Mr. Carter:

Q. Well, how many members did you normally, let's say, let's take your period of 19—have you been attempting to secure memberships in the association, let's say 1955?

A. I was since 1955.

Q. How many members did you get in 1955? How many people did you get to join the association?

A. Myself?

Q. Yes, you yourself?

A. Oh, I think in 1955, I personally was responsible for about eighty-nine to ninety members myself.

Q. Now how many members were you personally responsible for receiving this year?

A. I got about thirty members this year.

Q. Have you ever since 1955, have you personally secured as many as eighty-nine?

A. No, no, indeed.

Q. Since that period it has been less than eighty-nine?

A. Each year there is a drop off.

Q. Did you in each year since 1955 put forth the same effort?

A. Yes, sure.

[fol. 303] Q. Did you canvass the same people?

A. Yes, and I tried to redouble my efforts.

Mr. Carter: If the Court please, I would then wish to ask the witness the question and if the objection is permitted, I would like to make a proffer.

The Court: Very well, you may proceed.

Mr. Carter: With my proffer, am I ruled out?

The Court: Either way.

Mr. Carter: What is the reason that you have been unsuccessful since 1955 in securing as many members?

Mr. Hawes: Now if your Honor please, we object because it calls for a conclusion, opinion, and hearsay of the witness.

The Court: Any reason, based upon what any prospective members said would be hearsay and has been ruled out. If you wish to make a proffer now, you may proceed.

Mr. Carter: If permitted to testify, I wish to proffer that this witness will state that, based upon the statements which have been made to him by the prospective members, based upon his own personal experience and knowledge in securing NAACP memberships since 1955 to the present, that the reason that he is not successful in securing as many memberships as in 1955, is because persons are fearful that their identity with the association would become public and they would suffer economic, physical, and other [fol. 304] kinds of reprisals.

The Court: The Court is of the opinion that any evidence adduced here by this witness as to what any prospective or potential member might have said, did say, would constitute hearsay evidence and is therefore inadmissible, and the proffer is accordingly denied.

Mr. Hawes: Of course it is your Honor's ruling that any really admissible evidence showing what counsel seeks to desire is of course admissible here and I don't object to it.

The Court: Oh certainly.

Mr. Hawes: It is your ruling that it can't be shown by hearsay.

The Court: Oh certainly.

Mr. Carter: I want to point out to the court that the court's ruling would require the very issue which is before the court with respect to constitutionality requiring the disclosure of membership. The only evidence as the court indicates can be demonstrated by these persons personally coming and indicating that they are members of the association. We submit, if the Court please, that this is the



precise question which is before the Court at the present time.

The Court: No reason in the world why a prospective member who was afraid or who was apprehensive about [fol. 305] these things you speak about couldn't come up here and testify.

Mr. Carter: All right, sir.

The Court: But if a potential member or a member be deterred or if he be driven away from the organization because of fear of disfavor or because of unpopularity, there is no reason in the world or no prohibition against that very person or any number of such persons coming up and taking the witness stand and so testifying.

The Court: All right, that is all.

Thereupon the witness was excused and withdrew from the court room.

GILBERT L. PORTER, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you give your name for the purposes of the record?

A. Gilbert L. Porter.

Q. What is your employment?

A. I am executive secretary of the Florida State Teachers Association, Incorporated.

Q. Do you have in terms of that, in respect to that job, do you have any connection at all with the NAACP?  
[fol. 306] A. Not directly.

Q. Do you have any connection?

A. Yes.

Q. What is that?

A. Well I worked for the Welfare Negro Teachers and I think being a part of the NAACP is working for their welfare.

Q. You have worked for the Welfare of the Negro Teachers and in part you say that being a part of the NAACP you think is in the welfare of the negro teacher?



A. That's right.

Q. Do you encourage negro teachers or do you secure, seek to secure NAACP memberships among negro teachers?

A. I have encouraged it.

Q. For a period of how long?

A. The last twenty-five years.

Q. Now will you state for the record what is the success of your effort to secure the memberships in the NAACP?

Mr. Hawes: Wait a minute. Your Honor, I object to that question as being irrelevant and immaterial and calls for a conclusion and opinion of the witness. It bears on no issue in this case. I don't know if your Honor followed the wording of that question carefully but I believe if you have it read back you will see that it can't bear on any issue in this case. It is unlimited in time, going back over twenty-five years and certainly is only the opinion and conclusion [fol. 307] of this witness.

The Court: The question should be confined to within a reasonable time with reference to the Legislative Investigation.

Mr. Carters: All right.

Q. Would you tell the court then with respect to the success of your efforts in securing NAACP members among teachers since the period of 1956?

A. Since—

Mr. Hawes: I object to that as calling for the opinion, conclusion of the witness on matters not material.

The Court: Objection overruled.

A. Since 1956 most of the negro teachers have been afraid to join the NAACP.

Mr. Hawes: Just a minute, if your Honor please, I object to that hearsay conclusion of the witness. That is not responsive to the question and I move that that answer be stricken.

The Court: The point is well taken. That phrase of the answer was not responsive to the question and should be stricken. The motion should be sustained to strike that.

By Mr. Carter:

Q. The question was will you tell the court of your success in securing membership among negro teachers?

A. Success has been nil.

[fol. 308] Q. Now what is the reason why your success has been nil?

A. Fear.

Mr. Hawes: Just a minute, if your Honor please. I object to and move to strike the witness's conclusion or opinion that fear is the reason for this success being nil.

The Court: Well, the question can be devised on cross examination—what is the basis of fear. It would be premature to strike now. He says fear—if he knows of his own knowledge, that's a different proposition.

Mr. Carter: I have no further questions.

Mr. Simon: No questions.

Cross examination.

By Mr. Hawes:

Q. Doctor Porter, you say fear. In your opinion is the reason that you are having trouble getting members in the NAACP among the teachers, is that based on what other people have told you?

A. It is based on what the teachers have told me themselves.

Q. That is what they have told you?

A. They have told me that they do not want to join because they have read in the papers where different committees have come out, for example, committees have said that the NAACP in Florida was infiltrated with communists. He didn't want to belong to an organization if it is communist infiltrated.

Mr. Hawes: If your Honor please I do object and move [fol. 309] to strike the witness's opinion and conclusion and it develops after all that his answer is immaterial as well as hearsay and a conclusion and I move to strike it from the record.

The Court: The motion in so far as it is directed to the fear is well taken and is sustained. The motion is denied otherwise, but as to the reason, fear, that would be hearsay and would constitute incompetent evidence consistent with the ruling of the court already stated and is stricken upon motion of counsel for the committee.

Mr. Hawes: I have no further questions.

Mr. Carter: That is all.

The Court: Doctor, you may be excused.

Thereupon the witness was excused and withdrew from the court room.

Mrs. RUBY HURLEY, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Will you state your name for the record?

A. Mrs. Ruby Hurley.

Q. Mrs. Hurley, have you any connection with the NAACP?

A. Yes, I am employed by the NAACP.

[fol. 310] Q. In what capacity?

A. I am southeastern regional secretary.

Q. What does that position entail?

A. Well I have a responsibility of organization of branches, youth councils, and college chapters in this area, program direction, program projection, conduct and stimulation of membership campaigns, fund raising efforts—I have the responsibility of interpreting policy of the association to our local units, investigation of cases as they may arrive, various kinds of cases—those involving the brutality or killing of negroes, pressure against negroes, pressure against the association, so many things that I can't always remember all of them.

Q. By this area, would you identify what you mean by this area?

A. Well, my responsibility is in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee.

Q. Now just for the, you did hold a position in the association prior to that time?

A. Yes.

Q. By the way, how long have you been in that position?

A. Since April of 1951.

Q. Now did you work in the association prior to that time?

A. Yes.

Q. In what capacity was that?

[fol. 311] A. I was the national youth secretary.

Q. For how long a period did this predate the period when you were—

A. From 1943.

Q. Now, Mrs. Hurley, you are familiar with the NAACP, with the branches in Florida?

A. Yes.

Q. And throughout this region?

A. Yes.

Q. Taking the period from 1955 to the present, has your reason, I am talking about the entire southeast region first, has your membership, the NAACP membership increased or decreased during that period?

A. Very decided decrease in the period.

Q. What about the NAACP membership in Florida since the period 1955 to the present?

A. It too showed a decrease.

Q. Mrs. Hurley, have you made any, in your capacity, have you made any attempts to investigate and to find out the reason for the decrease in NAACP membership?

A. This of course is a very real part of my job—when we have decreases such as we have had in the last several years, I have the responsibility of trying to find out why and I have very definite facts in some instances and opinions in others as to why.

[fol. 312] Q. Now you have made an investigation and attempt to find out the reason why the decrease throughout the region?

A. Right.

Q. Has your investigation taken you into an attempt to find the reasons in Florida?

A. It has.

Q. What have you done in Florida in an effort to find out why any NAACP membership has fallen off during this period?

A. Well, I have had to visit most of the branches in the State and I have met with on these visits with the boards of our, the executive committees of our branches and moved around in the communities talking with other people who may not be members of our boards but who are either leaders in the community or had been at one time members of our branches.

Q. And you have been doing this now for a period, on this particular problem I am talking about, you have been doing this, I gather from your testimony for a period of the last four years?

A. That's right.

Q. What conclusions have you reached with respect to the reasons for the decrease in membership?

Mr. Hayes: If your Honor please, I object to the conclusions, opinions, hearsay testimony of the witness because her testimony shows that is what it is going to be. She got it, she said, from talking to other people in the branches, people who were prospective members and people who had [fol. 313] been—

Mr. Carter: I would like to point out to the court that we have here a person whose job it is to make investigations, whose employment is to discover the reasons why the loss of membership. I think if anyone is able to give information on this particular subject, that this person would be entitled to do so and so as this reason, her testimony cannot be considered to be as hearsay because her testimony is in fact based upon her personal knowledge and conclusions which she has acquired in respect to her employment as a position—in the position of an expert in this field. For this reason I think she should be permitted to testify.

Mr. Hayes: If your Honor please if I might make this observation, that to destroy the rule against hearsay testimony merely because it was this witness's job to find out what she could about the matter, then we just don't have any hearsay rule. It is the job of every Deputy Sheriff and every policeman to find out everything he can find out about

every crime committed in his jurisdiction and because of that why the hearsay rules can't apply to officers' testimony—if you follow logically the reasons set forth by counsel here as to why the hearsay rule shouldn't apply to this witness's testimony. That doesn't remove the fact that it is hearsay testimony—that I have no way of being confronted with or cross examining or refuting. She is purporting to [fol. 314] bring here evidence of what people have told her, supposedly all over this state, unidentified people who spoke in our absence—people that we cannot cross and it is the very purpose of the hearsay rule to exclude such testimony as that.

The Court: The court is of the opinion that the rule that excludes hearsay should be adhered to and it is so ordered.

Mr. Carter: I wish to make a proffer then if the Court please, that if permitted to testify that this witness would state that as a result of her effort to determine the reason for the loss of NAACP memberships and over the past five years in Florida and throughout the region for which she is regional secretary that on the basis of investigations, on the basis of personal knowledge, on the basis of her attempts to secure memberships and stimulate memberships that she has discovered that the reason for the loss in NAACP members, membership in this area today is that prospective members of the NAACP who normally would join the association because of the anti-NAACP climate in Florida and in this state are fearful of economic and physical reprisals if they become members because of the fear that public bodies such as the Legislative Investigations Committee will secure their names publicly identify them as members of the NAACP, and as a result of which they will be subjected to harm and hurt.

[fol. 315] The Court: The proffer is again denied. Of course, now it should be understood counsel that the court is not denying the witness from testifying to any matters or things within her knowledge or testifying about any comment or knowledge or information she has with reference to the decrease in loss of membership but the court sustained the objection as to the basis of the prospective members who would relate the reason why they refused to join or why they refused to affiliate. That seems to be the



main basis of the proffer and for that reason the court sustained the objection to it.

Mr. Carter: I am not sure now I understand where I am.

The Court: Well the Court simply denies the introduction of any hearsay testimony from the witness stand. That is the ruling of the court.

By Mr. Carter:

Q. Mrs. Hurley, do you have any personal knowledge, by that I mean knowledge of which you were on the scene of persons who have been frightened or intimidated by virtue of NAACP membership? Has that come up in your investigation at all?

A. Yes, it has.

Mr. Hawes: Now if your Honor please, I object to that unless it is limited to the state of Florida.

Mr. Carter: It is limited to the state of Florida. I am [fol. 316] sorry. It is limited to the state of Florida and it is also limited within the period of from 1955.

Mr. Hawes: I want to be sure counselor that the witness understands that she is talking about something now that you are asking her about, where she was personally present when the intimidation occurred.

Mr. Carter: Yes, I want to know—we have made a proffer which was based upon your investigation, your results, your conclusions reached as a result of the investigation. What I want to know is that during this period of time, were you ever personally present when you were witnessing acts of intimidation with respect to NAACP members in this state? Were you ever in that position?

A. No.

Mr. Carter: Now I want to ask so as in order not to waste the Court's time, I want to ask the Court how I should proceed in regard to this question. We have alleged and set forth in our return on page 3 and 4, resolution of the NAACP with respect to anti-communism which was passed in 1950—I have these resolutions passed from 1950 to the present time. I want to ask the witness in respect to how this happened to be passed and tell the Court with re-

spect to that—I am not sure whether this is within or without the rule and I don't want to waste unnecessary time.

The Court: You mean the resolution in opposition to [fol. 317] communism?

Mr. Carter: Yes. And with respect to getting rid of members.

The Court: To what else?

Mr. Carter: To putting out of the organization members who are personally members of the communist party.

The Court: The Court has already ruled that for the purpose of the limited proceeding here, the purpose of this hearing that we are not concerned with communism.

Mr. Carter: I see. Then I will have to make the proffer at this time.

The Court: Yes.

Mr. Carter: I would like to proffer to the Court that if this witness were permitted to testify on that question, that she would testify that the NAACP has since the time when the communist party became a member in the United States has been opposed to the communist party; that in 1950, at its national convention in Boston, a resolution specifically in opposition to communists and members of the communist party was passed and that that resolution is set out on pages 3 and 4 of the return of the respondent Gibson in this case; that in 1951 another resolution in the reaffirmation of that resolution was passed which read as follows:

Whereas the 41st annual conference in Boston adopted a resolution calling attention to internal conflicts in some [fol. 318] branches caused by groups which follow the communist line and condemning attacks on the association and its leaders by communists and their fellow travelers and instructed the board to take steps to stop communist infiltration or control of our branches and whereas the cardinal principle of those who follow the communist line is to support whatever happened to be at the moment the foreign policy of Russia, a totalitarian dictatorship while the cardinal principle of the NAACP is to support and strengthen American democracy by winning complete and equal rights for all people regardless of race and

Whereas the board of directors in an attempt to carry out this purpose adopted an amendment to our constitution:

restricting membership to those who support the principles and programs of the NAACP and

Whereas these principles include opposition to communist infiltration and control,

Be it resolved that we call attention of the branches to this action of the board in carrying out the entire communist resolution and

Be it further resolved that we advise the branches that any person excluded from the branch not being in accord with our policies and principles has a right of appeal to the board and that mere criticism of the local or national officials of the NAACP is not alone and of itself ground for [fol. 319] exclusion or rejection.

And, that the witness would further testify that a part of her responsibility in this region would be to see that this policy is enforced and that it is carried out—that she has carried out this policy with diligence and with fervor and that in so far as the Miami Branch of the NAACP is concerned since her presence as the regional secretary that she has had no evidence of any communist infiltration—any membership by communists in the Miami Branch of the NAACP, she has no evidence and has found no evidence of any subversive actions being taken by the Miami Branch of the NAACP;

That if any such action were taken or any person were taken that she in her official capacity would be required to know them and to take action against them and further she would testify that a similar anti-communist resolution has been passed by the association in 1952, 1953 and to the, at each convention to the present time.

The Court: The Court is of the opinion that while the policy referred to in your proffered evidence may be entirely correct; the proffer is immaterial and irrelevant for the purpose of this hearing.

Mr. Carter: We have no further questions.

Mr. Simon: No questions.

The Court: You may be excused.

[fol. 329] Thereupon the witness was excused and withdrew from the court room.

MRS. RUTH WILLIS PERRY, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Will you give your name?

A. Mrs. Ruth Willis Perry.

Q. Mrs. Perry, you are a member of the NAACP, are you not?

A. Yes, I am.

Q. Mrs. Perry, have you had any personal experience with any intimidations as a result of your public identity with the association?

A. Yes, I have.

Q. Would you tell the court what that experience has been?

A. The two occasions upon which I appeared before the Florida Legislative Committee in Miami directly following those investigations, there were anonymous phone calls at my job and at my home.

Q. When you had these hearings, was your name in the paper and was it publicized that you were a member of the Association?

A. That's right.

Q. And at what did these phone calls at your job consist?

[Vol. 321] A. Well it so happened that I heard some of them because when the head librarian is away, out of town or out of the building, I take the calls and this is the way one of the phone calls would go—"Do you have a person by the name of Mrs. Perry working at the library? Do you know that Mrs. Perry is a member of the NAACP?" Then finally, "Do you think that it is good to have a person associated with the NAACP working in the library?"

Q. What about the calls at your home?

A. Those were of a harassing nature. I think mainly for about a week after the second Legislative Investigation—when I got home from work about every half hour the phone would ring—I would answer the phone and the person on the end of the wire didn't hang up. I could tell it was an

open wire but there was just this silence that continued about every half hour for a week or ten days.

Mr. Carter: That is all.

Mr. Simon: No questions.

Cross examination.

By Mr. Hawes:

Q. The phone calls that were received in the library did you receive those personally, or did somebody else receive them?

A. They were received on several occasions by, we have had two head librarians in the last five years. They were received by both head librarians and then I received some of them personally.

Q. Who are those head librarians?

[fol. 322] A. The former one was Miss Bertha Aldrich. The other one Mr. Oscar Hart.

Q. Is he still there?

A. Yes.

Q. All you know about the calls that he received is what he told you about it, is that true?

A. That's right.

Q. Now the calls that you received were how many in number at the library?

A. I can't tell how many there were.

Q. And they were in substance what you related?

A. That's right.

Q. Were they inquiries as to whether or not the library knew that you were a member of the NAACP and then the inquiry as to whether or not they felt it was wise for a member of the NAACP to work in the library?

A. That's right.

Q. And at home, after the Committee hearing in Miami, I believe you said for a while you received calls about every half hour where your telephone would ring and nobody would answer it but they wouldn't hang up either?

A. That's right.

Q. But they wouldn't say anything to you?

A. That's right.

Q. You don't know who was calling?  
[fol. 323] A. No, I don't.

Q. You don't know why?

A. No, but I know I have never received that type of call in my life before.

Q. They didn't say anything about the NAACP or anything else?

A. No.

Q. Just wouldn't answer?

A. That's right.

Mr. Hawes: I have no further questions.

The Court: You may come down.

Thereupon the witness was excused and withdrew from the court room.

H. LEON LOWRY, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you give your name?

A. H. Leon Lowry.

Q. Are you a minister?

A. I am.

Q. Where are you from?

A. Tampa, Florida.

Q. Do you have any position with the NAACP?

[fol. 324] A. President of the state conference of branches.

Q. Now Reverend Lowry, you were last November or December in Tallahassee, were you not and testified before the Legislative Investigations Committee?

A. I was.

Q. As a result of that testimony.

Mr. Hawes: If your Honor please, I object to that as not true. The witness did not testify. He wasn't there at the time the committee desired him to be there. He did not testify. He was subpoenaed. I am sure you don't intend to mess this record up. He was subpoenaed and did



not testify.

Mr. Carter: I am sorry.

Mr. Simon: But he was present.

By Mr. Carter:

Q. You were present in Tallahassee?

A. I was present.

Q. And your presence in Tallahassee and your position as state president of the NAACP, the state conference and your failure to testify before the Committee received wide publicity, did it not?

A. It did.

Q. Reverend Lowry, would you tell the Court as a result of this, your publicity, as a result of your connection with the association, did any results happen in respect to your [fol. 325] personal life?

A. Yes. Many threatening phone calls and letters were received and finally two shots were fired at the home, one entering into the master bedroom.

Q. Your home?

A. Yes, one entering through a window of the master bedroom, passing through the opposite wall, hitting a corner and ricocheting off in the hallway falling into a flower pot. The other shot struck just above the window, ricocheted off the eave of the house. The bullet that entered was recovered by the police officers.

Q. Now Reverend Lowry, prior to your public identify with the NAACP, have you received any anonymous or threatening telephone calls? Had your house been shot at? Have you been threatened at all?

A. No. In no way, Counsel.

Mr. Carter: All right, that's all.

Cross examination.

By Mr. Hawes:

Q. Reverend, when were you subpoenaed to this hearing in Tallahassee?

A. I don't remember the exact date but when the hearing was held, November, just a few days prior to the hearing.

Q. November of 1959?

A. About that time.

[fol. 326] Q. Now you don't mean to tell the court do you that that was the first public identity of yourself with the NAACP? You don't mean to imply that, do you?

A. I didn't say that, Counsel.

Q. As a matter of fact, you have been publicly identified with the NAACP a good long time before November, 1959, hadn't you?

A. I have been identified before 1959.

Q. A good long number of years?

A. No.

Q. About how long would you say?

A. Oh, about two perhaps two years, maybe two and a half, I think.

Q. Two or two and a half years?

A. Yes.

Q. I want to get down, Reverend, to the date of this shooting into your house. When did that occur?

A. In February last or during the month of March.

Q. February or March of what year?

A. 1960.

Q. 1960, February, or March. After the hearing in November, 1958—it was November, 1959 that you were subpoenaed to Tallahassee, wasn't it?

A. That is correct.

Q. And it was the following February or March that the shots were fired into your home?

[fol. 327] A. That is correct.

Q. Do you know who fired those shots into your home?

A. I do not.

Q. Do you know whether or not any of the people that did that had been apprehended?

A. Not that I know of.

Q. Of course you called the officers?

A. I did immediately.

Q. And they made an investigation?

A. As far as I know.

Q. I believe you said they recovered one of the bullets?

A. That is correct.

Q. Now Reverend, you don't know who fired those shots into your home, do you?

A. I was inside. I don't know.

Q. You don't know as a matter of fact why they were fired, do you?

A. I suspect why.

Q. I understand that you suspect but you don't know why, do you?

A. Well I would say yes.

Q. Well, you know if your suspicion about the NAACP is right, then you know?

A. I do.

Q. If you were fired at by those two shots as a matter of [fol. 328] fact for some other reason, then you would be wrong?

A. I suppose.

Q. That's true?

A. All right.

Q. Now I want to know how long have you been receiving anonymous telephone calls and letters that you referred to?

A. Only since I have been outspoken for the NAACP, and that has been perhaps about a year.

Q. About a year?

A. Yes.

Q. You received as a matter of fact then threatening telephone calls as you put it and letters prior to being subpoenaed to Tallahassee to the Committee hearing in November, 1959?

A. Some but not as many, until afterwards.

Q. Some?

A. Yes.

Q. Do you know the identity of anybody who has called you on the telephone and threatened you, Reverend?

A. That I would not know.

Q. Have you received these calls personally?

A. I have some times and at other times my wife.

Q. Of course, in regards to the ones your wife receives, you just know what she told you about those?

A. That's all I know.

Q. Now how many of them had you received personally?  
[fol. 329] A. I couldn't give the exact number but I can say they were rather extensive.

Q. Has it been four or five?

A. Far more than that, Counselor.

Q. Have they been more in number recently or—

A. Since the shooting they have quieted down.

Q. Since the shooting they have quieted down?

A. Yes.

Q. Now you just said Reverend, that these phone calls were of a threatening nature?

A. That is correct.

Q. Would you tell the court what was said in those calls?

A. Well for the benefit of the ladies I'd rather leave out some of the abusive and profane language but the gist of it was that my life wasn't worth a plugged nickel and of course other epithets referring to race and I better get out of town and S. B., so forth and so forth and G. D. and what have you and you can't run this state you so and so and so—better be leaving—of that nature, that were very profane.

Q. Well now Reverend, you had some profanity in those phone calls?

A. Quite a bit of it.

Q. And you had some suggestions or threats that you had better get out of town?

A. That is correct.

[fol. 330] Q. Some statements that you couldn't run the state?

A. Precisely.

Q. And I believe you said in connection with that that there were some epithets relating to race?

A. Yes.

Q. Would you tell the court what that was, what that epithet was?

A. Well, let me see, how you can put it so it will sound at least a little decent.

Q. I don't want you to put something that will sound any way except the way it was?

A. All right, I'll tell you then, you damn black son of a bitch.

Q. Now is that the substance of what was said in most of those conversations, Reverend? I don't intend to try to go to each one of them.

A. In a substance along that line.

Q. In those telephone calls, could you tell if it was the same person or not in the calls that you received?

A. In some instances, yes, some others, no.

Q. Do you know how many different people you think you received telephone calls from that you could identify the voice as well as you could in connection with calls you have received previously?

A. I couldn't tell how many in number—I recognized one [fol. 331] voice—that's about three times and the way I recognized that of course I could hear it in the background, somebody speaking to some children.

Q. To some children?

A. Yes.

Q. Did these voices over the telephone say anything to you about the NAACP?

A. Yes, they mentioned the NAACP.

Q. They mentioned the name?

A. Yes, they did.

Q. What did they say about it?

A. Well, with a nigger organization they thought it could take over the state and that NAACP thought it could bring about integration and they weren't going to have any such thing in the state of Florida whether the NAACP wanted it or not.

Q. That is about the substance of what they said in regard to that?

A. In some instances, yes.

Q. Well did they mention the NAACP every time they would call you?

A. Not every time.

Q. Can you tell me about how many times the organization was mentioned in those phone calls?

A. I don't—I couldn't give you any specific number—I would, about, perhaps half or three-fourths.

[fol. 332] Q. Would you estimate the number of calls you received?

A. I wouldn't hazard a guess, Counsel, because it was over a long period of time.

Q. As a matter of fact, Reverend, did these people that called you over the telephone say anything to you about getting out of the NAACP?

A. No.

Q. Or threatening you in connection with it?

A. No.

Q. Did they say anything to you about anything that would be done if you didn't disassociate from the NAACP?

A. Merely said if I didn't stop talking over TV and so forth, making certain statements my brains would be blown out.

Q. If you didn't stop talking?

A. Yes.

Q. For integration?

A. That is correct.

Q. Now as a matter of fact that was in relation to your attempts to integrate the public schools of Hillsborough County, wasn't it?

A. It wouldn't be restricted to schools.

Q. Well the public schools and beaches and parks?

A. All facilities that are publicly operated and supported.

Q. You have appeared on television stations or programs advocating down there the abolition of segregation of all [fol. 333] public facilities?

A. Numerous times.

Q. Numerous times?

A. Yes.

Q. And it was in connection with those statements advocating desegregation that these people told you over the phone they would blow your brains out if you didn't stop that kind of talk?

A. That too and with reference to the Legislative Committee and my leaving the city of Tallahassee before having been heard.

Q. Now you got some calls that threatened you for making those public statements on desegregation over TV and otherwise?

A. That is true.

Q. And you were subpoenaed to this hearing in November, 1959?

A. That is correct.

Q. And you left Tallahassee as I recall and you correct me if I am wrong—I don't intend to mis-state this record.



You left Tallahassee for what you reported through your counsel the next day to be a prior commitment?

A. That is true.

Q. Although the Committee had refused to release you that day?

A. Refused to hear me.

Q. Refused to hear you as a witness that day?

A. That is correct.

[fol. 334] Q. And had refused to release you as a witness that day?

A. That is right.

Q. And you left anyhow, in defiance of the Committee and you received some threatening telephone calls in regard to that, didn't you?

A. I wouldn't say in defiance of the Committee, Counsel. I did leave but not in defiance.

Q. Well you left regardless of the fact that the Committee refused to excuse you?

A. That is true.

Q. And regardless of the fact that you had not been released from your subpoena, you left nevertheless?

A. I did that nevertheless.

Q. And you received some threatening telephone calls as a result of that?

A. That is true.

Q. Now what was said in regard to that?

A. Well again, just use the words A add two other letters—you black so and so, get back to Tallahassee.

Q. Get back up there and testify, is that what was said?

A. That is exactly what was said.

Q. Didn't have reference to your being a member of the NAACP or what they would do to you if you didn't disassociate from the NAACP?

A. Not in this particular instance.

[fol. 335] Q. Of course it was publicized in the newspaper the next morning that you had left Tallahassee without being released by the Committee and without their consent?

A. That is correct.

Q. And apparently that generated the telephone calls?

A. It could have.

Q. Do you know of any other reason that might have generated?

A. I don't know, Counsel, of any other.

Q. As a matter of fact, Reverend, isn't it true that the threatening telephone calls that you have received have not been the cause of your association and non association with the NAACP but it has been because of what was taken to be your defiance of the Committee in the one instance and because of your public pronouncement on desegregation in the other?

A. I will have to disagree with you there.

Q. The only thing that was ever said I believe you told me in connection with the NAACP over the phone was that the NAACP thought they could run the state and that they weren't going to have integration in spite of the NAACP. Isn't that true?

Mr. Carter: If the Court please, I think that the question has been answered and reanswered several times. It seems to me that this is getting down to an argument between the witness and counsel. The record will speak for itself. The point has been made. The record speaks for itself. [fol. 336] The Court: The point is well taken.

Mr. Hawes: We are not going to argue, your Honor. I won't even pursue that.

Q. It is a fact, though, Reverend, that your association with the NAACP was known publicly for the last two and a half years at least?

A. I would have to say yes, it was known.

Q. And you did not receive any of these telephone calls and threatening letters until you became so outspoken on television and other media down there for desegregation about a year, year and a half ago?

A. Just following your hearing in Miami I suppose the hearing was '58 or '59—I don't remember exactly.

Q. About a year and a half ago?

A. It started in that particular area. They began increasing their insisting.

Q. So in all events, the threatening telephone calls, the letters you had received started coming in not after it was known publicly of your association with the NAACP but

after you became active seeking desegregation, that's true, isn't it?

A. In part, not altogether.

Q. Well tell the Court that part that is not true?

A. The parts that they didn't start coming in after it became publicly known. It goes back as I said previously to perhaps two and a half years but they became increasingly insistent after the Miami hearing and the desegregation cases, the Tallahassee hearing but there were letters coming in and a few telephone calls but they increased as the publicity increased.

Q. Do you have any of those letters?

A. Unfortunately I did a stupid thing as I was told by the Chief of Police. I don't have them. I wish that I had been sensible enough to hold them because I ignored them.

Q. Did you destroy them?

A. I did that unfortunately.

Q. Now is it correct for me to say that you occasionally, quite frequently in fact make public statements to the press?

A. I do.

Q. Regarding integration matters?

A. That is as a representative of the NAACP.

Q. You do that?

A. I do.

Q. And you have done that since you have been in the position that you now occupy which is president of the state branches?

A. That is correct.

Q. And how long have you been in that position, Reverend?

A. Going on three years, now, just about three years.

Q. Can you tell me if that is the top position in the NAACP in Florida?

A. In the state of Florida, that is.

[fol. 338] Q. That is the very top position?

A. That is right.

Q. And you have occupied it for about three years?

A. Just about.

Q. Did you occupy any position in the Tampa Branch before that?

A. Just a member.

Q. Just a member?

A. Yes.

Mr. Hawes: I have no further questions.

Redirect examination.

By Mr. Carter:

Q. Just one statement. I think it is clear from the record, when you indicate Revel and Lowry that you were publicly identified as a member of the Association for the period of two and a half years, by that does that mean was your name in the paper in this connection?

A. Yes, radio, TV.

Q. Now I mean the beginning?

A. Well—

Q. In the beginning was your name in the paper as a president of the state conference?

A. Not too much.

Q. But as you began as a part of a program of the NAACP to come out publicly for desegregation, your name appeared more and more in the paper?

[fol. 339] A. Correct.

Q. And you noticed an increase in it?

A. That is correct.

Mr. Carter: All right, thank you.

The Court: You may be excused.

Thereupon the witness was excused and withdrew from the court room.

Mr. Carter: With the Court's permission, my two other witnesses are, I think their testimony would be in respect to loss in membership. I think that they would be by virtue of the Court's ruling, that they would be excluded and it would save time if I would merely proffer and let the court rule on that.

The Court: Once you have proffered, I think your point is preserved.

Mr. Carter: All right, it seems to me my witnesses would be cumulative and I would forego it—if they can be excused, they can come in the room.

The Court: Very well.

Mr. Carter: I am through.

The Court: Very well, respondent Gibson rests.

Thereupon the hearing was adjourned for the noon recess.

[fol. 340]

AFTERNOON SESSION

This cause coming on for further hearing the 30th day of May, A. D. 1960, before the Honorable W. May Walker, Judge of said Court, at Tallahassee, Leon County, Florida, there being present:

Mr. Mark R. Hawes, Counsel for the Committee.

Mr. Tobias Simon, Mr. Howard W. Dixon, Counsel for Defendant Graham.

Mr. Gratton E. Graves, Jr., Mr. Robert L. Carter, Counsel for Defendant Gibson.

The Court: The Court will please come to order.

HAROLD CURTIS FLEMING, being first duly sworn, testified as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name and address.

A. Harold Curtis Fleming, 63 Organ Avenue, Northeast, Atlanta, Georgia.

Q. What is your occupation?

A. I am the executive director of the Southern Regional Council, Incorporated.

Q. What is the Southern Regional Council, Incorporated?

A. It is a non profit organization that carries on a program of education and research in the field of race relations.

[fol. 341] Q. How long has it been in existence and how long have you been connected with it and in what capacity?

A. It's in existence since 1944. I have been a member of

the staff of the organization since 1947 and I am, it was, I was director of information for several years, rather assistant director and for the last three years, I have been the executive director in charge of the staff operations.

Q. Describe your duties and functions as the executive director of the Southern Regional Council?

A. In general I am responsible for all of the staff activities of the Southern Regional Council. A major function of the organization for which I am responsible is the collection of information about developments and activity and organizations in the field of race relations in the south and the dissemination of these facts to the general public, to the press and to interested agencies, public and private. One of the things that we have been concerned with for some time now has been gathering information and observing as closely as possible instances of intimidation or reprisal, of violence, that may have occurred because of antagonism to people who took an unpopular view on racial questions or organizations that were pursuing a course that was generally unpopular in the south.

Q. Have you written any books or articles?

A. Yes, I have written a great many articles on the [fol. 342] subject of race relations and have co-authored one book.

Q. Have you had the occasion to study the nature, functions, purposes and methods of action of the National Association for the Advancement of Colored People?

A. It's been a part of our function to familiarize ourselves with organizations in the field and we have in this sense, we have followed the activities of the NAACP and generally informed ourselves about it.

Q. Can you give us a brief statement as to what you have learned concerning their purposes, activities, functions, and methods of operation?

Mr. Hawes: Objected to, if your Honor please, as being irrelevant and immaterial, has no bearing on no issue in this case.

The Court: The Court is of the opinion that the objection is well taken and should be sustained and it is so ordered.



Mr. Simon: Have you reached any conclusion as to the reaction of the people in the south as to the activities of the National Association for the Advancement of Colored People?

Mr. Hawes: Objected to, if your Honor please, as being irrelevant and immaterial and calling for a conclusion and opinion of this witness for hearsay testimony.

Mr. Simon: If your Honor, please, the relevancy is quite [fol. 343] apparent in that one of the issues in this case is the existence or non-existence of hostility and the manifestations of hostility as a consequence of membership in the NAACP. Secondly, I quite agree that it does call for an opinion and a conclusion of this witness. I however feel I have qualified him as an expert in the field of race relations and as such he is qualified to render an opinion on this subject in the same manner that the doctor would be qualified, a veterinarian would be qualified to render an opinion in his respective field.

The Court: What was the question?

Mr. Simon: My question to the gentleman was, have you had the opportunity to ascertain the reaction of the people in the south to the functions and activities of the National Association for the Advancement of Colored People?

The Court: Objection sustained.

Mr. Simon: At this time then if your Honor please—well, let me ask you this question, sir. Have you had the occasion to study and observe the manifestations of hostility on the part of persons in the south and in the state of Florida to the members of the National Association for the Advancement of Colored People?

Mr. Hawes: If your Honor please, we object because it calls again for the conclusion and opinion of the witness and for hearsay and in particular for his own interpretation [fol. 344] of what amounts to a manifestation of hostility for a particular person.

The Court: That may be or may not be true. The Court will assume that the witness will answer competently and agreeable to the rules of evidence. The objection will be overruled subject to your right to further object and move to strike incompetent testimony.

Mr. Simon: Read the question.

Reporter: Have you had the occasion to study and observe any manifestations of hostility on the part of persons in the south and in the state of Florida to the members of the National Association for the Advancement of Colored People?

A. Yes. My organization carried out a study. This was done under my supervision and control—a study of specific incidents in the south which were summed up under the general title of Intimidation Reprisal and Violence in the South's Racial Crisis.

Mr. Hawes: If your Honor please, we object to any study of what happened in the south. We are only concerned with the state of Florida.

The Court: Objection is well taken.

Mr. Simon: If your Honor please, I am not attempting to exclude the state of Florida. I am prepared to lay a predicate for it at this time for the qualifications of this witness to testify on this subject and then I will develop [fol. 345] the incidents and events of which he has learned in the state of Florida. I am prepared to connect this matter. I presume the objection is on the ground of relevancy, and immateriality. I am prepared to show that is relevant.

The Court: Very well.

A. Specifically this publication summarizes something over five hundred such instances as I have mentioned. Some of these occurred in the state of Florida and some of them were directly an outgrowth or the result of activity or membership in the NAACP on the part of the person against whom the action was taken.

Mr. Simon: Can you tell me was the general nature of the incidents which your organization found to have existed and which constitutes manifestations of hostility against members of the National Association for the Advancement of Colored People—

Mr. Hawes: If your Honor please, I am going to object to the quest. as framed because it calls for this witness's interpretation of what amounts to a manifestation of hostility. Now if this witness has any really competent

admissible evidence of any direct nature, I ask that he be restricted to that—what he knows of his own knowledge and not his interpretation of what the actions of other people amount to or what motivated them.

The Court: The Court is of the opinion that the question propounded calls for instances, deductions, and con-[fol. 346] elusions by the witness and is therefore vulnerable to the objection made and the objection is accordingly sustained.

Mr. Simon: Can you tell what incidents of violence, what was the nature of the incidents which your organization learned of? I am speaking just generally for the moment, the nature and manner in which these incidents took place.

The Court: I might as well foreclose the question, Mr. Simon. The Court is of the opinion that any evidence about what the witness has read from some book or some newspaper is inadmissible and incompetent. If he has any—

Mr. Simon: I would agree.

The Court: If he has any knowledge or information found or gathered himself, the Court is perfectly willing to hear it but—

Mr. Simon: Are you restricting me, sir, to asking this witness as to instances of intimidation or violence against members of the NAACP which he himself has observed as distinguished from things which were observed and collected by and reproduced by his organization in the normal course of its business.

The Court: Certainly.

Mr. Simon: All right, sir.

The Court: If the organization has investigators, detectives or experts who found this information, let them be produced.

[fol. 347] Mr. Simon: All right, sir.

Q. Mr. Fleming, are you able to state a conclusion as to your opinion of the reaction of the majority of the people in the state of Florida to the purposes, functions and activity of the National Association for the Advancement of Colored People?

Mr. Hawes: To which we object, if your Honor please, on all the obvious infirmities embraced in the statement of the question itself. It calls for a conclusion and opinion of the witness on matters of a mental state of the various individuals of the state of Florida—their mental attitudes as well as their actions. It is just not in fact a proper question at all.

The Court: The question is obviously an incompetent one. The Court is not concerned with the attitude of the people with reference to the organization so much anyway. The Court is concerned with the deterring effect of the disclosure of membership and the other deterring qualities mentioned. The Court is not concerned with that. Objection sustained.

Mr. Simon: Mr. Fleming, have you reached a conclusion as to the effects which will probably be visited upon persons who are revealed to be members of the National Association for the Advancement of Colored People?

Mr. Hawes: Now, if your Honor please, I object on all the grounds that I just stated to the question last pro-[fol. 348] pounded.

The Court: The Court has previously ruled on a similar question, Mr. Simon. The objection naturally will be sustained.

Mr. Simon: All right, sir. Mr. Fleming, I show you the defendant Graham's Ex. 1 for Identification purporting to be a booklet prepared by three organizations including the Southern Regional Council entitled Intimidation Reprisal and Violence in the South's Racial Crisis and ask you if this is the culmination of the study made by your organization on intimidation, reprisal, and violence against members of the NAACP against members in the south?

A. The publication as the result of the Southern Regional Council's study is broader than merely the reprisals against members of the NAACP, no such instances are included.

Q. Was the study which resulted in the publication which I have just indicated to you conducted under your supervision and control?

A. Yes.

Q. Was it conducted in the normal course of the business of your organization?

A. Yes.

Mr. Simon: I offer this into evidence as Defendant Graham's Exhibit 1.

Mr. Hawes: May I ask one or two questions?  
[fol. 349] The Court: Very well.

By Mr. Hawes:

Q. Who conducted the research that went into this book here?

A. Members of our staff—more than one person, persons employed by the Southern Regional Council.

Q. All over the south?

A. I am afraid I don't understand?

Q. Where are those people located?

A. They were based in our headquarters which is in Atlanta.

Q. Now did anybody have anything to do with the gathering of the information in this book besides members of the staff of your organization?

A. No.

Q. This information was gathered entirely by members of your staff?

A. Yes, it was gathered, pulled together in the form in which you see it by members of my staff.

Q. And the way that it was pulled together is what I am interested in, Mr. Witness?

A. Yes.

Q. How did they go about pulling it together? What sort of an investigation did the members of your staff make?

A. It was pulled together mainly from secondary sources, reports, some of them from persons on the scene in which [fol. 350] this took place, some newspaper reports, and other reports that came to us from interested persons, cooperating organizations.

Q. As a matter of fact some of the information in this book was gathered out of newspaper stories, wasn't it?

A. Yes.

Q. Some of it was gathered out of weekly publications of other organizations interested in the racial situation, wasn't it?



A. Yes.

Q. Like the weekly publication of the NAACP, The Crises?

A. No.

Q. What other publication?

A. The sources for the published information are identified in the booklet. The object in this particular study was that each incident reported be authenticated by publications in the general press and you will see that.

Q. Publications in the general press?

A. That is correct. Other sources were examined for the accuracy of these, but each of these incidents is attested to by published newspaper stories and those sources are shown in the back.

Q. In other words, the foundation for each of these instances related in this book as shown here on the back page under Code?

A. That is correct.

Q. That's right, isn't it?

[fol. 351] A. Yes.

Q. One of these sources listed under the Code as a source of information for this booklet is the Southern School News. What is that?

A. That's a nationally known publication published in Nashville which collects and puts out information on, mainly on education and race in the south.

Q. Now that's an organization separate from yours?

A. Yes.

Q. And it gathers information from newspaper accounts, too, doesn't it?

A. It has correspondents in each of the states which supply it with information, published monthly, a publication called Southern School News.

Q. I see B here is the Associated Press, and C is the United Press?

A. That's correct.

Q. That is news articles of those news disseminating services which are the foundation for some of the information in this report?

A. Yes.



Q. And I see D is the Chattanooga Times. I assume that is a newspaper in Chattanooga?

A. That is correct.

Q. Some articles or article written in the Chattanooga [fol. 352] Times, a newspaper is the foundation for some of the stuff in this report, is that correct?

A. That's correct.

Q. And I see the Atlanta Constitution listed here as E—that's the newspaper, isn't it?

A. Yes.

Q. And the Arkansas Gazette, Montgomery Advertiser and the Birmingham News, Wall Street Journal and the Jackson (Miss.) Clarion Ledger, New York Times, Jackson (Miss.) State Times, the International News Service, the Columbus (Ga.) Ledger, Twin City (Winston-Salem) Sentinel, Charlotte Observer, the Orangeburg (S. C.) Times and Democrat, the Rock Hill (S. C.) Evening Herald, the Washington Post and Times Herald, the Winston-Salem Journal, Nashville Tennessean, The State (Columbia, S. C.), Birmingham Post/Herald, Delta Democrat-Times, United Press International, and the Evening Star (Washington, D. C.) as the foundation and source of information so-called information in this report, aren't they?

A. They are so listed.

Q. Those are all of the sources as a matter of fact that are listed?

A. They are, all that are listed. They are not all that were consulted.

Q. They are all that are listed?

A. Yes.

Q. You don't know as a matter of fact, do you, what portions of the information contained in this booklet came out of the news stories of the various papers and news dissemination media and what portions of it came from the investigation of your staff members, do you?

A. No, the main facts in those summaries are substantiated newspaper stories. This was the object of this particular publication.

Q. As a matter of fact all of the main purported facts in this booklet were taken out of the news sources that I read off here?

Mr. Simon: If your Honor please, he has already testified to this on several occasions. I don't see the purpose of it.

The Court: Objection overruled.

Witness: I am sorry, will you repeat that?

By Mr. Hawes:

Q. As a matter of fact, all of the main facts, purported to be portrayed in this booklet came from these various newspapers and news gathering and disseminating agencies that I have named off, didn't they?

A. Yes. As I have said a moment ago they were corroborated from, in many cases, from other sources as well, but the object of this booklet was to present all the material that was authenticated by published newspaper accounts so you might say that.

Q. And the actual truth or falsity of any given statement [fol. 354] in the booklet you personally know nothing about, do you?

A. I think that's, I think I know something about some of the instances in there, yes, from sources other than those shown; as far as direct personal knowledge or witnessing of the incidents, no, sir.

Q. The bulk of the incidents related here, you don't have any personal knowledge of that at all?

A. That's correct.

Q. That's true, isn't it?

A. That's correct.

Q. It's true you don't know whether they are true or false of your own personal knowledge?

A. That is true. Your question is whether I knew anything about them or not?

Mr. Hawes: If your Honor, please, we do object to the introduction of that hearsay compounded several times.

The Court: The Court is of the opinion that the proffered document is incompetent evidence and the objection to its admission should be sustained and it is so ordered.

By Mr. Simon:

Q. Now, Mr. Fleming, have you been able to reach a conclusion as to the effects upon the membership of a National Association for the Advancement of Colored People if the list of members were publicly revealed?

Mr. Hawes: Now if your Honor please, we object to— [fol. 355] Mr. Simon: It simply calls for a yes or no answer, your Honor.

The Court: Read the question.

Reporter: Have you been able to reach a conclusion as to the effects upon the membership of the National Association for the Advancement of Colored People if the list of members were publicly revealed?

Mr. Hawes: We object to that if your Honor please, because it calls for something irrelevant and immaterial and is incompetent hearsay supported opinion and a conclusion of the witness.

The Court: The Court has previously ruled on similar questions. Consistent with the previous ruling of the Court, the objection is sustained.

Mr. Simon: Your Honor, you have limited us to a question of whether the publication of membership lists would be a deterrent.

The Court: Or any other deterrent, anything that is deterrent from which you can establish by competent evidence. The Court has not limited it to publication alone.

Mr. Simon: I understand. I have only asked this man whether he is able to reach a conclusion as to what effects the revealing of the membership lists would have on the membership of the organization. All I want to know is [fol. 356] whether he has reached such a conclusion or not. Then I will call for the conclusion. Now I submit that the proper procedure is to permit him to state his conclusion as an expert in this field.

Mr. Hawes: If your Honor please, it is merely this witness's speculation and guess as to whether he himself knows what he can speculate such an effect might have on the revealing of the membership. There is obviously nothing in the world but hearsay speculation and guess work there. It couldn't be competent evidence in any case.

Mr. Simon: This man is as much privileged to render an opinion by reason of being an expert as a doctor would be to render an opinion of the cause of measles.

The Court: This situation is a little different here. The court is of the opinion that the objection is well taken and is sustained.

By Mr. Simon:

Q. Mr. Fleming, I would like you to assume if you will the situation of a negro minister living in Miami who is active in the—

Mr. Hawes: Now if your Honor please, I will just object to that question now—

Mr. Simon: I obviously am entitled to finish the question.

Mr. Hawes: Because it calls for an opinion, hearsay, [fol. 357] speculation of the witness. It couldn't possibly be proper and we ask that the question be not promulgated.

The Court: The Court is of the opinion counsel has a right to propound the question. After he has propounded it, then you may interpose an objection. The witness will refrain from answering until the court has had an opportunity to rule on it. You may proceed.

Mr. Simon: I appreciate that. Now, Mr. Fleming, I would like you to assume the circumstances surrounding a negro minister living in the city of Miami who, without being publicly identified with the National Association for the Advancement of Colored People, or membership therein, is nevertheless known to be active in fields of racial advancement, active in seeking equal opportunities in schooling, housing and other facilities for all persons, regardless of color who by reason thereof has received threatening phone calls and letters as to his life and limb, both for himself and for immediate members of his family, who has had threats against his property and against the property of the church in which he is a pastor, who has had crosses burned on his lawn, and assume also that he is at this time forced to reveal his membership in the National Association for the Advancement of Colored People. I ask you if you can reach a conclusion as to the effect that this knowledge publicly rendered might have upon his future security

[fol. 358] and well being both for himself and his family and his property and his economic future.

Mr. Hawes: To which we object if your Honor please on all the grounds that I have stated to the last series of questions propounded by counsel—irrelevant, immaterial, calls for guess work, speculation, suspicion, hearsay. It is incompetent, and assumes many things not shown in the evidence in this case.

Mr. Simon: I admit as I have told your Honor before that it assumes a set of circumstances not yet in evidence but your Honor has permitted us to call this witness out of turn because we know he is trying to catch a plane. We plan to prove up all the facts of the hypothetical by the testimony of Mr. Graham as I have stated before.

The Court: Objection sustained.

Mr. Simon: All right, I would like at this time to proffer into evidence the following statement which would be made by the witness if he were permitted to testify to each and every one of the questions previously propounded to him.

First of all, we proffer into evidence as defendant Graham's Exhibit number 1 the document previously identified as Defendant Graham's Exhibit number 1. In addition the witness will testify as follows:

[fol. 359] During the thirteen years of professional concern with southern race relations, I have become quite familiar with aims and activities of the National Association for the Advancement of Colored People and with the public attitudes manifested towards that organization. The NAACP is properly regarded by friend and foe alike as the spearhead of the negro effort to achieve equality of opportunity regardless of race and desegregation of all public facilities. It carries on a vigorous program for these objectives through legal action, legislative lobbying, persuasion publicity and the organization of membership groups at the state and local level. Particularly through litigation, the NAACP is the most effective organization working against segregation and discrimination. This has made it for the vast majority of white Southerners, as well as for others, a symbol of the civil rights effort. As such it is regarded with hostility by the preponderance of white Southerners who are emotionally committed to the existing

racial patterns and antagonistic to the changes which they attribute to the intervention of the NAACP. This hostility is evident throughout the south, Florida included, and expresses itself in a variety of forms of state legislative actions designed to restrict and punish the NAACP, economic reprisals against individuals active in the NAACP, warnings and threats against such individuals and sometimes overt violence directed against their persons and [fol. 360] their property.

These primitive actions have been directed against persons white and negro, who have expressed opposition to the racial status quo in the region. Membership in the NAACP is publicly viewed as prima facie evidence of commitment to this dissident and unpopular position. The Southern Regional Council has kept a running record of such instances. A collection of these findings for the period 1955 through 1958 was published by the council in cooperation with two other organizations under the title *Intimidation Reprisal and Violence in the South's Racial Crisis*. This publication summarizes five hundred thirty cases of retaliation against groups or individuals in the south who assumed or were thought to have assumed unpopular positions on racial issues. In each case the facts are attested to by public newspaper reports as well as other documentation. Included are instances of cross burnings, threatening telephone calls, and also job losses, boycotts, beatings, bombs and even murder committed against persons who have been active in the NAACP or had espoused aims which the NAACP symbolizes. Some of those events occurred in Florida. On the basis of these and other studies of the council as well as the general observation of southern opinion and developments for thirteen years, it has been my opinion that public disclosure of the NAACP membership in Florida [fol. 361] is likely to subject the individual in question to abuse, harassment and possibly physical danger. Such a conclusion is supported by a wealth of evidence including the utterances of public officials and other prominent figures, the actions of the State Legislature, the avowed hostility to the NAACP of Citizens' Council and other pro-segregation groups in the state, the antagonism to the



NAACP of much of the press and incidents of reprisal and violence in Florida that are undisputed matter of record.

By the same token the NAACP would suffer through the loss of existing members and the fear of other individuals to be identified with the organization as new members.

Mr. Simon: I have no further questions, if your Honor please.

The Court: Any objection to the proffer?

Mr. Hawes: Yes, sir. All the objections that I have stated to this last series of questions.

The Court: Consistent with the previous ruling of the court, the proffer will be denied.

Mr. Simon: Any questions of this witness?

Mr. Hawes: Were you going to make this a part of your record?

Mr. Simon: I have made it a part of the record in this case.

[fol. 362] Mr. Hawes: I want to call your Honor's attention to the fact that it won't be necessary to interrogate the witness about it but the only part of this book that deals with Florida again is on page 21 and goes through page 22 which is the Intimidation, Reprisal and Violence referred to as Defendant Graham's Exhibit 1 for Identification. I have scanned all the purported newspaper reports there and none of them mention the NAACP. I just call your Honor's attention to that. None of them mention membership in the NAACP. None of them mention any incident involving anything growing out of any activity with the NAACP or any disclosure of membership of it and certainly the balance of the book on other states couldn't be admissible and even if you assumed, your Honor, that this man was an expert in the field, what he is asking to put in evidence there doesn't bear on the question before your Honor.

Mr. Simon: Do you have any further questions?

Mr. Hawes: No questions.

Mr. Simon: That's all we have.

Thereupon the witness was excused and withdrew from the court room.

The Court: What says the respondent Graham?

Mr. Simon: We will call Mr. Williams.

[fol. 363] WILLIAM K. WILLIAMS, being first duly sworn,  
testified as follows:

- Direct examination.

By Mr. Simon:

Q. Please state your name, address and occupation?

A. William K. Williams, 4241 Southwest 109th Court, Miami. I am the executive director of the Florida Council on Human Relations.

Q. What is the work of the Florida Council on Human Relations?

A. The Florida Council is a non-profit, non-political organization chartered by the state of Florida representing in its membership and governing body a cross section of the people of Florida working to build bridges of understanding between the various racial religious and other groups of the state seeking to accumulate their fact finding efforts, information about what happens within the state that affects the relations of people carrying on a general education program throughout the state to achieve better, more positive understanding between all the peoples. It is my job also to serve as consultant to public officials, private organizations, and individuals, in any matters they may have involving human relations.

Q. What is your work in connection with this organization?

A. It is my responsibility to initiate with the board of directors the general programming and to personally follow [fol. 364] through to implement all decisions that I made. It is my job to be at the disposal of all our own membership or any other organization or individuals in the state. It's also my job to become informed about organizations and individuals operating in the field of human relations in the state.

Q. Have you had the occasion to study the purposes and aims of the National Association for the Advancement of Colored People and its method of operation within the state of Florida?

A. Yes, indeed, as one of the organizations involved in the human relations issues of the state, this has been an organization with which I have become rather familiar, read its literature, met its people, attended its meetings, done all I could to become as well oriented as possible in what it is and how it functions.

Q. Have you had the occasion to study the reaction of the general public in the state of Florida to the workings of the National Association for the Advancement of Colored People within the State?

A. Yes.

Mr. Hawes: Wait a minute, Mr. Williams. You have answered the question.

Mr. Simon: Can you explain to the court what you have ascertained to be the public reaction to the work of the NAACP within the state of Florida?

Mr. Hawes: Now if your Honor, please, the petitioners [fol. 365] object on all the grounds that we objected to the same—substantially the same question when propounded to the witness immediately prior to this witness.

The Court: Objection sustained.

Mr. Simon: If your Honor please, in the interest of time, I will state that my purpose is to ask the same type of questions including questions designed to ascertain the reaction of the people in this state to the actions of the NAACP, manifestations of these reactions, the manner in which they take place, the effects upon the organization of these actions, the effect upon individuals who are forced to reveal their membership by compulsory process in these organizations, and the effect upon the prospective and existing members of this organization, in the organization by reason of this compulsory disclosure, and if your Honor will sustain objections, I am sure objection will be made to all of these. If your Honor will sustain the objection, I will proffer a statement of the witness and save time.

Mr. Hawes: I am not going to object to any lawful evidence that he calls for. I am going to object to any hearsay. I am going to object to opinions and conclusions but if he wants to proffer anything he wants to prove with competent evidence, I am not going to object to it. I don't want this

court or myself in the position of just having as a matter of blanket policy excluded this witness from giving any lawful evidence that he might have on any of these subject matters that counsel has gone over. I am not going to object to any lawful evidence that he offers, competent evidence in regard to those matters.

The Court: Of course it will be so understood that the court is only ruling upon the evidence actually proffered or on the questions or similar questions propounded. The Court has already announced that counsel is not precluded from proffering any of those propositions by appropriate and competent evidence as the Court conceives them to be but the court conceives the evidence offered or proffered from several witnesses to be incompetent as a matter of law and inadmissible and it is upon that basis that your proffer is denied—not that you are denied any competent and relevant testimony.

Mr. Simon: I understand that. It is our position, if your Honor please, respectfully, that counsel has the right to prove reactions of people to organizations and individuals by competent opinion testimony of experts and that is how we plan to prove this matter. Mr. Williams, did you prepare a statement which you have with you as to the gist of your testimony along the lines I have indicated?

A. Yes.

Mr. Simon: Would you read the statement please? We proffer in evidence the following statement read by the [fol. 367] witness as being the answer to the questions which we will propulgate which we maintain are similar to the statements to the questions which were asked the preceding witness:

Mr. Hawes: No, sir, your Honor, I object to any such procedure as this. There is a lawful manner for counsel to make a proffer into the record in this case and I don't care to have the witness read and interpolating into this record and then have it said later that the Court won't let the witness testify to anything that the witness might now refer to.

The Court: Your point is well taken. Let the proffer be made in the usual regular way.

Mr. Simon: I respectfully submit that among other methods of proffer is a question and answer between counsel and witness. In the interest of time I will read the statement.

The Court: Very well.

Mr. Simon: A part of my responsibility includes becoming familiar with organizations and individuals having to do with human relations in Florida. Thus, it is I have come to know the aims and efforts of the NAACP in Florida, the organization which is generally identified as the hero or culprit of the segregation issue, depending on one's point of view. Its membership includes persons ranging from maids and day laborers through college professors. [fol. 368] Its role has as indicated in the name an association devoted to the improvement of the general lot of colored citizens. It has used litigation and persuasion as its chief methods of operation with obvious success in the courts, particularly. These successes have resulted in the NAACP becoming the primary target of pro-segregationists organizations, some twenty of such having been organized since 1954. Identification as a pro-integrationist in the south has resulted in all manner of intimidation, reprisal, and even violence.

Identification with the NAACP almost guarantees increased treatment of this sort. This includes anonymous threats by telephone and letters, cross burnings, loss of employment, loss of credit, refusal by merchants to sell groceries, and gasoline, beatings and murder.

The record in Florida demonstrates the relation of this state to the south. Any difference which may exist is to be found in the degree of its response to the segregation issue rather than the nature of its response. Hostility to the NAACP has been pronounced and continuous. Were the membership records of this organization to be made public, it is evident that those persons would be subjected to the full range of harassment and intimidation which have been visited on others to date. The pent up resentment of the opposition which cannot be expended on the organ-



[fol. 369] ization itself would be spent on the heads of these individuals as they become personal symbols of all that is hated in the integrationist movement.

For the organization itself, such exposure would mean the loss of old members and a drastic reduction in new memberships resulting in a decided impairment of its functioning.

I proffer that as the statement that would be made by the witness in response to the questions I have indicated to your Honor.

The Court: Counsel having indicated to the court that the matters embraced within the proffer would be proven by conclusion and opinion evidence and other evidence which in the opinion of the court constitutes hearsay evidence, the proffer is denied.

By Mr. Simon:

Q. Now, Mr. Williams, assume if you will the circumstances surrounding a negro minister living in Miami, Florida, not publicly identified with the National Association for the Advancement of Colored People but nevertheless active in the advancement of his fellow members of the colored race and seeking equal opportunities for all persons regardless of color, at schools and other public facilities who has until this time been threatened, has had crosses burned, has been threatened in both his life and as to both his life and limb, as also have the members of his immediate family. His property has been threatened with destruction. [fol. 370] The church of which he is a member as pastor has been threatened with bombing and assume also if you will that this person is now called upon to reveal publicly his membership in the National Association for the Advancement for Colored People. Are you prepared to reach a conclusion as to what the effects upon this individual might be if he were called upon and forced to reveal his membership in the National Association for the Advancement of Colored People publicly?

A. Well it is evident that—

Mr. Hawes: Wait a minute, Mr. Witness. If your Honor please, we object on all the grounds that we objected to the



same question, or substantially the same question propounded to the prior witness.

The Court: Consistent with the ruling of the court on previous and similar questions, the objection is sustained.

Mr. Simon: If your Honor please, we would like to proffer that if the witness were permitted to testify he would state that the effect upon such a person as described in the hypothetical would result in continued and intensified activities against him, continued threats against his life and property with the possibility that the same would become intensified to a point where these threats and harassment would actually be carried forward into full force and effect.

The Court: The proffer is denied in accord with the previous ruling of the court.

Mr. Simon: No further questions.

[fol. 371] Mr. Hawes: Again, your Honor, as I understand it, the Court is not foreclosing from proving those things as facts but only foreclosing him in proving it in the manner that he seeks to prove it.

The Court: The Court hasn't foreclosed the proving of any of those things mentioned, but the Court has foreclosed the manner and form offered for proof of those matters.

Mr. Simon: I think it is totally unnecessary for counsel to continue to advise your Honor as to what your rulings mean. I know what they mean. He knows what they mean and I well understand your Honor is following the law as you understand it to be.

Cross examination.

By Mr. Hawes:

Q. Mr. Witness, what is your position?

A. I am the executive director of the Florida Council on Human Relations.

Q. And is there a parent organization to that and if so, what is its name?

Mr. Simon: I object, your Honor, on the ground it is beyond the scope of direct examination.

Mr. Hawes: I have a right to go into the witness's interest, his background, if any, and just what his connections are to see what his motives are. I think I have a right to go a certain way into the background of the witness and [fol. 372] his connections.

The Court: If it has a parent organization?

Mr. Hawes: I want to know if his Florida Council on Human Relations had a parent organization?

The Court: Objection overruled.

A. The Florida Council was established by the Southern Regional Council of Atlanta, though it now exists as a completely independent body, as I said, chartered by the state and under the direction of its own board.

By Mr. Hawes:

Q. Now the Southern Regional Council is the organization that Mr. Fleming belongs to, isn't it?

A. Yes.

Q. Now does your Florida Council on Human Relations have a charter following the Southern Regional Council? Can you tell me if you know?

A. I'm sorry—do you mean is our charter like the charter of the Southern Regional Council? No. There are some differences. I have not read the Southern Regional Charter for a long time but I know that ours is rather different from theirs in some ways.

Q. Can you tell me whether or not the Southern Regional Council is an affiliate or ever was an affiliate of the Southern Conference Education Fund, Inc.?

A. These are two completely separate organizations.

Q. As of now?

[fol. 373] A. They always have been.

Q. Do you know if the board of directors for those two organizations are identical?

A. Do I know that they are?

Q. Do you know whether or not they are?

A. I am not familiar with the board of directors of the, in detail of the other organization.

Q. By the other organization, you mean the Southern Conference Educational Fund, Inc.?

A. Yes, I would feel certainly that they are not identical.

Q. You don't know what the board of directors is on that?

A. No.

Q. Have you talked to anybody besides counsel here in preparation for the testimony that you expected to give at this hearing, Mr. Williamis?

A. Mr. Fleming and I had some conversations since we—

Q. You discussed your proposed testimony with Mr. Fleming?

A. We discussed part of it, yes.

Q. Am I correct in my assumption that the study that you made of the thing you have been asked about here was made sort of like Mr. Fleming's study was made?

A. What do you mean by Mr. Fleming's study?

Q. Well you are familiar with this little booklet that Mr. Fleming brought here in the court, aren't you?

A. Yes.

[fol. 374] Q. You know that little booklet was based on the gathering of newspaper stories over the south, don't you?

A. Yes.

Q. Is that the way you gathered the information that you intended to testify concerning up here in this hearing?

A. Well, that's one of our methods, yes. I also personally traveled the state extensively and talked to people and inquired into matters to try to get as much first hand knowledge as I can of any incidents.

Q. Well you read the newspapers, that is one of the ways you have studied this thing?

A. That's right.

Q. You went around and talked to people that you understood were involved in some of these incidents?

A. Yes.

Q. Now you don't mean to say that you saw any of these incidents or alleged incidents first hand? You just talked to people who purported to know something about them?

A. Yes, there is no way I could know about them before hand.

Q. Then it is true is it not that the only information you have concerning these incidents is what you have been told by other people and what you have read? That's true, isn't it?

A. Yes.

Mr. Hawes: That's all.

The Court: You may come down.

[fol. 375] Mr. Simon: While the witness is on the stand, I would like to re-offer in evidence the proffered Exhibit number 1 of the defendant Graham on the ground that by reason of his examination counsel has brought it to the attention of the court.

Mr. Hawes: I have never heard of that before.

The Court: The proffer will stand denied.

EDWARD T. GRAHAM, being first duly sworn, testified as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name?

A. Edward T. Graham.

Q. What is your address?

A. 356 Northwest 9th Street, Miami, Florida.

Q. How long have you been a resident of Miami, Florida?

A. Seventeen years.

Q. What is your occupation or profession?

A. Minister.

Q. Are you employed in that capacity by the city of Miami?

A. I didn't get the question.

Q. Are you employed in that capacity in the city of Miami?

A. Yes, I am.

[fol. 376] Q. How long have you been so engaged in the city of Miami?

A. Thirteen years.

Q. Have you been subpoenaed? Had you been subpoenaed to appear as a witness before this Florida Legislative Investigations Committee in the city of Tallahassee on or during the month of November, 1959?

A. Yes.

Q. At that time you were asked whether or not you were then and there a member of the National Association for the Advancement of Colored People, were you not?

A. That question was asked.

Q. You refused to answer that question?

A. I refused.

Q. Why did you refuse to answer that question, Reverend?

Mr. Hawes: Objected to if your Honor please, unless it has to do with the legal objection that he stated before the Committee. I don't just want this witness turned loose without any check rein on him at all for his personal reasons unless it has to do with the legal objections or positions that he takes here. It is completely irrelevant and immaterial.

The Court: The objection would seem to be well founded. Moreover, it seems the question had been foreclosed at the pre-trial conference, the reason for stating before the committee and the record discloses the reasons, the record having [fol. 377] been introduced in evidence by stipulation of counsel, so the record itself reflects the reasons offered to the Committee so this Court is not concerned with any further reasons.

Mr. Simon: The reason it has been set down for this hearing if your Honor please on the rule to show cause and the return to show cause, this man fears intimidation and reprisal. If it is counsel's position that it is admitted by reason of our statement in the return, I am perfectly satisfied. I thought it should be a matter of proof and I am prepared to prove the situation and I don't know of a better way to do it than asking the person involved. Rather than being immaterial or irrelevant, this hits right at the heart of this question before this court now as the issues are raised and claimed by the rule to show cause, no part of

which has been moved to be stricken or anything of that nature.

Mr. Hawes: Let me say this, if your Honor please, that if the witness will be instructed to confine his answers to the grounds stated before the Committee and the grounds embraced in his return to the rule issued by this Court, then I won't object but the way the question is framed, it is so broad, the private motivations of this witness, which could be anything in the world, can come in under that question, that is what I object to.

[fol. 378] Mr. Simon: I will reframe the question.

Q. Reverend Graham, within the confines of the reason presented by yourself either through yourself or through your counsel to this Committee, you gave your reasons until such subsequent time as we filed on your behalf a return to the rule to show cause why you should not be required to answer these questions as issued by the Court. Will you then state within the confines as thus presented your reasons for refusing to answer the Committee, why you were not, why you refused to answer the Committee, why you then and there would not say whether you were a member of the NAACP?

A. Counsel, my reasons are the same today as they were when I stated this before, growing out of my intense fear of reprisals from individuals who evidently, for reasons better known to themselves would be antagonistic to the organization to which I have been linked on the basis of prima facie evidence established relative to such things as intimidations to me, to my family, and to my church manifested in terms of cross burning, in terms of telephone calls, in terms of threats of bombing to the church, which have been made through some of my church officers and members and directly, I believe to the police department of the city of Miami. These are the conditions which let me know that there is definite danger for a negro to be linked with the NAACP in Miami, Florida. I don't know whether this obtains through the state because I am talking about my own experience now and I live in Miami, Florida. These [fol. 379] things have been proven. They are part of the



records and of course I don't want to go through that any more and I don't want to testify.

Mr. Simon: No further questions, Father.

Cross examination.

By Mr. Hawes:

Q. Reverend, you say you received some threats?

A. Yes, I did.

Q. In what manner were those threats made to you?

A. Letters, telephone calls.

Q. Have you any of the letters?

A. Not with me.

Q. Do you have them in existence?

A. I think that they might be in my files.

Q. You didn't bring them with you?

A. I have none with me, counsel.

Q. How many such letters have you received?

A. Oh, I received many letters. They come in thick and fast especially after situations like these where we heighten it in the mind of the public.

Q. Letters with the return addresses on them?

A. No, these fellows who write them are very particular not to identify themselves.

Q. You must have a lot of letters if they come in thick and fast?

[fol. 380] A. Well, I didn't testify to that effect. I said they came in thick and fast. I may have some in my files. That was my testimony.

Q. Well, you received quite a lot of them, haven't you, Reverend?

A. Oh, they come in.

Q. Thick and fast, I believe you said?

A. Yes, I said that.

Q. Could you estimate how many of them came in after the last time you were before the Committee?

A. Well, if you want me to hazard a guess, I could do that. I certainly don't have an absolute count.

Q. Just a guess.

A. Maybe twenty-five or thirty.

Q. Twenty-five or thirty. What did you do with those letters?

A. Some we destroyed, maybe some we saved. I know one in particular I saved because as I read the letter, I saw in it I thought, despite the fact it was what I could construe as relative to my own self an antagonistic letter, I thought there was in it an element of genuine interest. That one I answered. There was no anonymity in this letter.

Q. No what in it?

A. Anonymity.

Q. Someone signed that letter?

[fol. 381] A. Yes, and a return address was on this.

Q. Didn't anybody threaten you in that letter, did they?

A. Yes, in my opinion threat was there—if you want me to explain that threat I can.

Q. Would you do that?

A. Yes, the question of the friends I had lost because I was fooling around with this NAACP. Well, in a culture like this, you don't want to lose any friends if you can help yourself. That's a threat in my interpretation.

Q. That's what you call a threat?

A. No, I say that is a threat in my interpretation.

Q. Tell me just what was stated in that letter that you construed to be a threat, Reverend?

A. Well what I just said a moment ago that you have lost a lot of friends because you find yourself identified with this NAACP.

Q. That in your opinion, you assume that to be a threat?

A. Well the loss of friends is always a threat.

Q. How many other letters that you received of those twenty-five or thirty were threats of that nature?

A. Well, I don't remember that the others were as kindly to me as that letter.

Q. What was the nature of the threats involved in those other letters, Reverend?

A. Well, they were to the fact that I was non patriotic [fol. 382] and that I was communistic and that I am a nigger and other things that I said and so forth, not complimentary statements.

Q. Any threats of violence to your person or body in those letters?

A. Well, I can't remember, that there were threats to my body.

Q. No threats of your life or maiming you or anything of that nature?

A. I don't remember that there were any direct reference made to my life.

Q. Threats of the fact that you were unpatriotic, that you were communistic, and what else did you say? Reverend, were those threats or those references in the letter did they have to do with your failure and refusal to testify before the committee or did they have to do with your alleged connection with the NAACP?

A. Well, I must arrive at the conclusion on the basis of the fact that whichever way you look at it, that it came up through my failure to testify as a result of relationship with the NAACP so that there is a definite connection.

Q. Isn't it true that the references in those letters to the fact that you were unpatriotic, weren't their statements made in reference to statements regarding your refusal to testify before this Committee?

A. Counsel, I don't know that I can say exactly what was in the minds of any irrational person that would take it upon [fol. 383] themselves to malign an individual who thinks at least that he is doing what the rights of his country permit him to do. I can't read their minds because you can't even assume—their minds are not normal, so I won't take the position that I can know what they had in their minds.

Q. I am not asking you to be quite that supernatural. I am asking you to tell me what was written in those letters and I want to know whether or not it is true that the references in those letters with regard to your being an unpatriotic person were not written in connection with statements about your refusal to testify before the Committee?

A. I would say that in those letters there were no mention of such of my refusal to testify before the Committee but in the one letter to which I referred a moment ago there was reference to the fact that I had relationship with NAACP.

Q. Now what was the nature of that reference?

A. Well I stated it and I will state it again that you have lost friends because you are fooling around with this NAACP thing.

Q. Is that the only reference to the NAACP that was made in those letters?

A. Well, I don't know about those letters but now in this letter that's the only reference to NAACP that was made that I can remember.

Q. I want to know what reference was made to the [fol. 384] NAACP in the other letters that you remember?

A. I don't think I testified to the fact that there was.

Q. As a matter of fact, the NAACP was only mentioned in the one letter you received?

A. In the one letter that I had and paid that much attention to.

Q. You don't read and pay attention to these letters?

A. Well, I thought I made myself explicit a moment ago when I said that in this one letter which I answered, I felt there was evidence of sincerity. Therefore I answered that one. A whole lot of these letters that come in, you don't take time to read them through. You are busy with lots of other things but there might be something in the early part of a letter that might catch your attention as it did in this one. Many of these we don't read, sir.

Q. Well you don't know what many of them say then?

A. Many of them, those that I don't read, I don't know what they say.

Q. Well those that you don't read, you don't know whether they have any threatening allegations in there because of your association with the NAACP or not, do you?

A. I have no knowledge of knowing what they contain if I didn't read them.

Q. Now I want to know Reverend, how many letters you have read which contain any threat or reference to the [fol. 385] NAACP or any threat or reference to you in connection with the NAACP?

A. Well all I can testify to now is the one letter to which I have already referred in testimony.

Q. Now that's what I want to get to. That's the only mention you can remember in any of the letters of your

relationship with the NAACP in those letters and that is where the statement was made in the letter that you have lost a lot of friends because of messing around and being identified with it?

A. That's right, and the letters that I have read.

Q. So the balance of the letters we can just discard as either you didn't read them or they didn't have any reference to the NAACP?

A. I think that's a reasonable assumption.

Q. All right now, how many telephone calls have you received yourself personally say over the last five years?

A. You want me to—

Q. That you interpret to be threatening or have a threatening nature?

A. Would you want me to have a guess, counsel?

Q. Yes.

A. Maybe twenty-five—thirty.

Q. Maybe twenty-five or thirty in the last five years, is that correct?

A. More or less.

Q. Now, Reverend, I am not trying to trip you or trick [fol. 386] you in any way. Have you received any calls more than five years ago?

A. More than five years ago?

Q. Yes, as long ago as over five years, say in 1955 or prior thereto?

A. Yes, in truth, I did.

Q. Now, was it many prior to 1955? Have you received many such calls or only a few, only one or two?

A. I don't know that I can describe them as being many. I know that those that I received and the development at the time I received these calls resulted in some very definite action that I should like to remember as being unfavorable to me.

Q. Well, let's go back to 1955, the Florida Legislative Investigations Committee had not come into existence at that time, had it?

A. I don't believe it had.

Q. Now as a matter of fact you were publicly identified with the NAACP back then, weren't you, in Dade County?



A. Well, I don't know. Your guess on that counselor is about as good as mine. I can't say as a matter of fact.

Q. I am asking you if you saw any reference to it in the public press of Miami that you were, according to the press of Miami, any newspaper in Miami allegedly connected with the NAACP?

Mr. Dixon: I am going to object to that. As pointed out quite often by Mr. Hawes, newspaper reports cannot be relied upon. I don't think he should be allowed to rely upon [fol. 387] them either.

The Court: This is cross examination.

Mr. Dixon: It is only hearsay evidence that he is bringing in newspaper reports.

Mr. Hawes: I certainly am not going into any newspaper reports. Do you remember reading anything about—

Mr. Simon: Just a minute. I would like to get the Court's ruling on the matter with regard to the relevancy of the situation.

The Court: The Court certainly rules that you can't go into the reports. The question has been withdrawn. I understand from counsel upon the objection made. He abandoned the question, so having abandoned the question there is nothing left in the record upon which the Court should rule.

By Mr. Hawes:

Q. Reverend, these telephone calls that you received, I am talking now of those that you received personally, were any of them threatening in nature?

A. Yes, some of them were threatening.

Q. Now when did you receive the last one? When was it you received the last threatening telephone call?

A. I believe it was in November, I believe of 1959.

Q. In November of 1959?

A. Yes. Well anyhow let's say it was after the hearing of [fol. 388] your Committee.

Q. After the hearing?

A. Yes.

Q. Here in Tallahassee?

A. I believe it was here.



Q. All right now, we are talking about 1959, last year. Where were you when you received that call, do you remember?

A. I was at home.

Q. At your home?

A. Yes.

Q. Did you know the caller?

A. No.

Q. Was it a man or a woman?

A. This was a man, the very last one.

Q. But you never did identify that person?

A. No, I didn't identify him, no, sir.

Q. What did he say to you?

A. Well, he, this person said, and they had been trying to get me for a long time to the telephone and two other members of my family had answered and had said to me that this person was continuously calling in. This was after I had come in from work. I was there about fifteen minutes to a half hour when the call came and I said I would pick it up and I did and this individual said to me, "Well, we're going to get you this time. You thought you won out in Tallahassee but you didn't".

[fol. 389] Q. "We're going to get you this time?"

A. Yes.

Q. He didn't tell you anything more than that, just that?

A. That's all, that he had time to tell me.

Q. Did you hang up on him?

A. Yes.

Q. What?

A. I did.

Q. You didn't attempt to ascertain his identity?

A. No, I've never tried that before.

Q. You assumed he is the one that your folks had told you had been trying to get you for several other times there?

A. That's purely an assumption.

Q. You don't know whether he had ever called you before or not, that was an assumption on your part?

A. I couldn't prove it.

Q. Now prior to that, when was the last call you got of a threatening nature?

A. Oh, I don't know. We got several calls during that period but if you ask me to be specific, you have me at a decided disadvantage, counselor.

Q. I don't want to get you at a disadvantage. Will you tell us the nature of those conversations?

A. They were about the same and one set of them was not to elicit any information, nor to give any. It was just to [fol. 390] antagonize my family for a whole period and for the telephone people I had to explain to them we had to keep the telephone off the hook. This was done because another citizen happens to be on my telephone line—not that they could do anything but I wanted them to know why my receiver was down.

Q. I want to know what sort of conversation went on in those calls that led up to you taking your telephone off the hook?

A. Well, as I said counsel, there was a series where there wasn't very much conversation at all but you can very well see that it was an attempt at harassment of my family and I to inject fear into it and to have us think that anything might be on the other end—that is in the minds of the people making this call—clearly a question of intimidation.

Q. Are you telling me in effect that your telephone would ring and when you or your folks would answer it that there wasn't any conversation on the end of the line?

A. That's right, these are some of the times.

Q. No conversation at all?

A. Yes.

Q. You would say hello and the party just wouldn't answer?

A. That's right.

Q. You would say hello and they still wouldn't answer?

A. Yes.

Q. But you could tell he was still on the line and hadn't hung up?

[fol. 391] A. Yes, the wire was still open.

Q. The wire was still open?

A. Yes.

Q. That occurred a number of times there until you finally just left your telephone off the hook?

A. Well we wanted to sleep a little.

Q. Somebody dialing that phone—of course you never learned the identity of those people, did you?

A. No, we had no way of knowing.

Q. And you have a total absence of conversation on that series of calls?

A. No conversation at all.

Q. Which you attribute to be an intimidation?

A. Well, I couldn't find another reason.

Q. All right now, what I want to know is, the nature of the conversations in the calls which you interpreted to be of a nature of a trick, other than the one you have told me about, where they said, "We're going to get you now. You think you got away in Tallahassee but we're going to get you" or words to that effect. What other conversations did you have? What was the nature of those conversations?

A. Well, I read that a certain group of individuals printed something that related to me and had exhibited that thing in the community and I think they must have had an opinion that this was a very, very effective method of character assassination. Well, shortly after that time [fol. 392] a group of individuals of long standing in the community had publicly tendered to me a plaque for services rendered to the community. This individual called to discuss this with me. I remember this very well because of his eagerness to know that even in the face of what they had done that the community had done this. I remember verbatim the answer that I gave to these individuals, that at least there were some people in our world that remained yet with good common sense. After that he didn't bother me any more, that same set of people.

Q. Now it appears that there were some people calling you on the telephone. That's what we were talking about, isn't it? Your telephone conversations? That's what I asked you about, but did we get off onto something else there, Reverend?

A. Well the man was talking with me on the telephone and I said to him, maybe you didn't hear me, counsel, I

said to him when he asked me if the people would give me this plaque after what they had done, I said to them, "Yes, there are some people remaining in the world yet who had good common sense". That was the telephone conversation.

Q. What was the threatening part of that conversation, Reverend?

A. Well, the threat was inferred. It was suggested in terms of the literature which was intended for as I said for the record, character assassination.

Q. Do you have any of that literature that was distributed [fol. 393] on you at that time?

A. I don't think that I have any. It wasn't distributed to me. It was sent in the community. There may be some.

Q. This fellow called you up and said, "Look here, these other people are giving you this plaque here in spite of what I have said about you and this stuff that I have disseminated against you". Is that the substance of what he said?

A. Yes, I reiterate my previous statements the same.

Q. You interpreted that as a threat by innuendo?

A. Not exactly what he said but except that the inference was there that this literature that was distributed, distributed by these people talking on the telephone, that was the threat.

Q. I see. What was the nature of any other threats that you received over the telephone?

A. Well, I don't know that they go any broader than what I have already enunciated.

Q. Now, I believe we have already covered your letters you received. There was only one of them that mentioned NAACP, so as a matter of fact, Reverend, any publicity that you have received as a result of this Committee's actions allegedly linking you with the NAACP, I believe is the way you put it, haven't really had any deterring effect on your activity at all in the relation of or in the field of human relations, has it?

A. Will you phrase that question again for me, counselor?

Q. I say any publicity that you might have received as [fol. 394] a result of this Committee's actions hasn't actually had any deterring effect on your activities with other organ-

izations including the NAACP towards desegregation, has it?

A. Well, of course you are asking me now to answer a question which I believe could be corroborated only in the presence of clairvoyance. I can't answer that question. How can I answer that?

Q. Well you go right on about your business with all the organizations that you are member of, interested in desegregation in spite of the publicity you have received as a result of this Committee's work, don't you?

A. Well, but there are two contingencies, one is the effectiveness with which you do it as to one thing and the other is the further antagonism against those individuals who take exceptions to what you are doing. There are these possibilities that no man entering into a highly controversial society as this we enter into can do it without these things in the back of their minds and they base them definitely out of certain conditions which grew out of the past. I don't think too much of the man who would lose his past. He must think that if reprisals came here and here, the reasoning then becomes simple that if thus and so precedes that reprisals will come here and we do not know how far those reprisals will go.

Q. Well do you know anything personally of your own knowledge of anybody, I don't want any hearsay when I [fol. 395] ask you this question. Do you know anybody of your own knowledge who has been fired from any job because of their connection with the NAACP?

A. Well, yes.

Q. Give me his name, if you know?

A. I think this man Berkman's name was submitted today. I believe it's Berkman in testimony thereof that he was submitted, I mean fired because of his relationship with the NAACP, so stated on the literature of the—

Q. You are talking about Berkman?

A. Shaw Brothers who did it.

Q. About whom Reverend Gibson testified today?

A. I believe I heard it in the testimony.

Q. What?

A. I heard it in the testimony, I don't remember who testified.

Q. Do you know anybody else who has lost their job because of the disclosure of their activities connected with the NAACP?

A. No, I can't think of another person just now.

Q. And all you know about him is what you have heard here in this court room ~~there~~ today, that's true, isn't it?

A. Oh, no, I knew that he had been fired.

Q. You knew that already?

A. I didn't see the letter but if you are asking me to differentiate between what is witnessed, being present at the time the letter was written, no, I can't do that but I don't think that this is the only area of acceptable fact. [fol. 396] Q. That's the only one you knew about. Of course you didn't read that letter?

A. No, I didn't read the letter. All I know is the man left his job, went away—might not have been fired, and he left his activity in the NAACP.

Q. You don't know of any other case at all where that happened?

A. Not where he had been fired—I know of the Lowry case where the worse intent was that he was shot at, I know that case.

Q. That's the Reverend Leo Lowry from Tampa?

A. I wasn't there. I wasn't there.

Q. You don't know why he was shot at?

A. No, no more than he wouldn't be any less dead whatever the reason might have been.

Q. That's true. Now you don't know Reverend, as a matter of fact of anybody else who has been fired but you do know of people do you not who have retained their jobs on after the disclosure publicly of their membership with the NAACP?

A. I don't know any as a fact.

Q. Don't you know?

A. No.

Q. Well you know Mrs. Ruth Perry, don't you?

A. Well I didn't know that Mrs. Perry had been disclosed publicly, maybe she was.

[fol. 397] Q. You know Mrs. Ruth Perry, don't you, Reverend?



A. Yes, I'm looking at her.

Q. This is her, isn't it?

A. Yes, that is she.

Q. Don't you know it for a fact that she has been working in the public library on Miami Beach for many years?

A. Yes.

Q. Don't you know it for a fact that she has been well known and reported through the press for several years as being the executive secretary of the Miami Branch of the NAACP?

A. The answer is no. You don't—

Mr. Dixon: Just a minute.

Mr. Hawes: You don't know that?

A. You don't either, Mr. Hawes.

Q. Did you hear her testify today that that was her position?

A. No, sir, I didn't hear that testimony.

Q. You didn't hear that?

A. She didn't testify to that, counsel. We ought to get the record straight. She was never the executive secretary of the NAACP.

The Court: Don't argue. Just answer the question.

A. I'm sorry Judge.

By Mr. Hawes:

Q. Omitting the executive part please, you have a very agile brain—you caught me there off base. I was wrong. I admit it.

Mr. Dixon: I object to the statement made by counsel.  
[fol. 398] The Court: Well taken.

By Mr. Hawes:

Q. You know she was secretary of the Miami branch of the NAACP without the executive part?

Mr. Simon: I object on the ground it is immaterial and irrelevant.

The Court: Objection sustained.

Mr. Hawes: Did you know that?

The Court: Objection sustained.

Mr. Hawes: If your Honor please, I want to ask the witness one question in regard to that. There is a vast difference between secretary and executive secretary in the NAACP. One is a paid position and the other is an elective position.

Mr. Simon: I object to counsel testifying.

Mr. Hawes: What the witness has told me he doesn't have any recollection of pertained to something that I had made a mistake on when I used the word executive and I would like permission of the court to ask the witness if he knows whether or not this woman was publicly disclosed as secretary of the Miami Branch of the NAACP several years ago?

The Court: Very well, you may proceed.

By Mr. Hawes:

Q. Do you know whether she was publicly disclosed to be [fol. 399] the secretary of the Miami Branch of the NAACP several years ago?

A. Counsel, I—

Mr. Simon: To which I object.

The Court: Objection overruled. Cross examination. Wider latitude is permitted.

A. Counsel, I don't know that she was publicly exposed as secretary. I think that there is general knowledge that she has been.

Q. General knowledge for several years, that's true, isn't it?

A. Yes, that's true.

Q. You know that she is still working for the Miami library?

A. I understand that she is.

Mr. Hawes: Your Honor, I have no further questions.

## Redirect examination.

By Mr. Simon:

Q. Reverend Graham, did you receive a telephone call from any person wherein a threat was made to bomb the church of which you are the pastor?

A. Yes, we did.

Q. Would you tell us about that phone call, please?

A. Well, I believe that there was several phone calls that came, only one that came to, no, there were two that came to me and that this I can testify on because I know it [fol. 400] first hand. It came at the time when we were having those bombs in general. I don't know the area it was now, in the city of Miami, and we were fighting against this sort of thing and we extended, we had had, asked for a mass meeting, extended an invitation for Thurgood Marshall, general counsel of the NAACP to come make our speech for us. I think that is what gave them the occasion to call and make this threat saying they would blow up the church if Thurgood Marshall was allowed to speak there, and we of course went ahead with the meeting but we reported the telephone call to the police, took some precautions.

Q. Were you the subject of having a flaming cross placed on your yard at your home?

A. Yes, we have had that happen.

Q. When was that?

A. I am trying to think—it must have been 1950.

Mr. Simon: I have no further questions.

## Recross examination.

By Mr. Hawes:

Q. 1950, Reverend, it wasn't publicly known that you had any connection with the NAACP then, was it?

A. I believe 1950, 1950 I was the president of the Miami Branch.

Q. Was that generally known?

A. Well, I thought it was pretty generally known when this cross came. I tried to find another reason why they burned it.

[fol. 401] Q. Now after that did you receive any threatening telephone calls? Did they slack off or did you receive any that early?

A. Yes, we got some telephone calls that early. They are the same general nature, Counsel. You get them whenever the individual comes up in the limelight that way. Those calls will come in, sir.

Q. Did you come up in the limelight?

A. Well I guess that's what it is—if you get a cross burned on your lawn, you know that sort of sticks you up in the public's eye.

Q. Has it been your experience that you get these phone calls and also following some incident in which your name is in the press?

A. Well that might be, but we get them other times, too.

Q. That's generally true, isn't it?

A. Yes, I would say so.

Q. And some of them, and I am not going to go into the nature of this but the details of it, but some of those were the result of some publicity you received in a court proceeding one time too, weren't they?

A. Well I think we decided that those that didn't identify themselves we had no way of saying what they stem from and I don't want to sit here after I take an oath and make a statement.

Q. What I am asking you about Reverend, isn't it true and don't you know that some of those calls came to you as [fol. 402] a result of something not associated with the NAACP at all?

A. I don't know that as a fact, sir.

Q. You don't know that?

A. No.

Q. About that time in 1950, Reverend, when that cross was burned there at your place, wasn't that about the same time that the Miami Daily News was writing some stories about your activities in connection with some other organizations besides the NAACP?

Mr. Dixon: Your Honor, again we renew our objection to the fact that this is also a hearsay question which we were not allowed to ask witnesses and whether it is cross examination or not, you are asking him hearsay questions, Mr. Hawes.

Mr. Hawes: We have the situation now where the witness says that these cross and instances followed his public disclosure—

The Court: The question has already been propounded. It is repetitious so the objection is sustained on that ground. You have already propounded that question, organization not associated with the NAACP. He has already been asked that very same question.

Mr. Hawes: I didn't recall it your Honor, and I don't believe it is so but of course I accept the Court's statement.

The Court: I understood you to ask him a few minutes [fol. 403] ago whether or not some of these threats weren't occasioned by activities by reason other than being associated with the NAACP?

Mr. Hawes: Yes, sir, but that's not what I am asking him now. I am asking him this question that in 1950 when the cross was burned if it is not true that the Miami Daily News then writing about his activities used his name and stories in connection with other organizations not the NAACP but other organizations. I am not asking him if the threats or intimidations were in connection with the NAACP or not but whether it is true that his name appeared in print in connection with his alleged activities in certain other organizations at the time of that cross burning or thereabouts. I think that it is relevant and material and I think that it might show that the cross was burned for some reason not connected at all with the NAACP.

The Court: If that very question has not already been propounded, you may ask him that question.

By Mr. Hawes:

Q. Now, Reverend, isn't it true that back in 1950 about the time that cross was burned on your property that the Miami Daily News was running some articles down there about your purported activity with some other organizations excluding the NAACP?

A. I don't know. Maybe you could refresh my mind, Counsel, and I could testify to the fact if I saw it but now [fol. 404] I am not recalling it.

Q. Well you are not denying, you are stating that you don't recall that is true or not?

A. Well of course if I don't recall it, it certainly doesn't make any difference whether I affirm or deny. I can't recall it so that's the answer, I don't recall it.

Q. You don't have any present recollection of it?

A. No.

Mr. Hawes: No further questions.

Mr. Simon: Step down, please.

Thereupon the witness resumed his seat at the counsel table.

R. J. STRICKLAND, being first duly sworn, testified as follows:

Direct examination.

By Mr. Simon:

Q. Please state your name, address, and occupation?

A. R. J. Strickland, 743 East Tennessee Street, Tallahassee, Florida, Chief Investigation for the Florida Legislative Investigations Committee, Tallahassee, Florida.

Q. Now in connection with your investigations, have you ever had the occasion to speak to Augusta Birnberg?

Mr. Hawes: If your Honor please, I am going to object [fol. 405] to that as being irrelevant and immaterial and calling for matters not material to any issue in this case and going into this man's investigations conducted on behalf, at the direction of this Committee and myself as counsel and we object to any such interrogation as that.

The Court: For what purpose is the question propounded?

Mr. Simon: One of the issues in the cause is the substantiality of the State's interest in the matter under investigation and we would propose to prove through this witness as we had previously attempted to prove and proffer through



Chairman Herrell that all of the State's information concerning the fourteen persons who were presented to Reverend Graham for identification are no longer residents of the state of Florida and that the committee has no knowledge of their interest in or with the communist party. I feel that we can establish that. That would represent the lack of substantiality of the Committee's interest in this matter. Your Honor has ruled on it I know but—

The Court: Well with that announcement, the Court is of the opinion that the objection should be sustained. It is so ordered.

Mr. Simon: All right, sir, I would like then to make the following proffer.

[fol. 406] With regard to all the fourteen persons shown in the record as having been presented to Edward T. Graham for identification, the witness will testify that he has spoken to none of them except possibly Nimmo and that he has no personal knowledge as to whether any of these persons are members of the communist party. I will amend that statement that if permitted to testify the witness would testify that of the fourteen persons he spoke to three, Waller, Nimmo and Popp and that he has not had any personal contact with any of the others and does not know of his own knowledge whether any of the others are members or ever have been members of the communist party and that with regard to those three he reported that they were no longer members of the communist party with the exception that, and that further, he has no knowledge as to whether or not any of these persons were members of the National Association for the Advancement of Colored People. I have another question to ask.

The Court: Have you concluded your proffer?

Mr. Simon: Yes, sir.

The Court: Consistent with the previous ruling of the court, the court will sustain the objection to the proffer.

Mr. Hawes: Yes, your Honor and in connection with that at this time and because this is the second time that that same untrue proffer has been made, first in connection with [fol. 407] Mr. Herrell and second in connection with Mr. Strickland that the committee has no information that any of these fourteen people were ever members of the NAACP

or the communist party. I want to say if I felt in any way that that stated-proffer was relevant, I would be setting about to disprove it but I do now want to introduce in evidence before your Honor the Petitioner's Exhibit 1.

Mr. Simon: I object to him presenting his case at this time.

Mr. Hawes: Petitioner's Exhibit 1 for identification which we have already identified through Reverend Gibson which shows that Louis Popps was a member of the NAACP, was one of the officers of the NAACP in Dade County when the Reverend Gibson was president down there and his signature appears there right below Reverend Gibson's. We would like to have that document previously identified for identification now introduced in evidence if your Honor please because it shows the untruthfulness of the proffer that is made in both those instances.

Mr. Simon: I will object to this. Counsel can't introduce in evidence his case during the defendant's case. I will reserve objections on the best evidence and relevancy, materiality until such time as it is proper.

The Court: Objection sustained.

[fol. 408] By Mr. Simon:

Q. Now, Mr. Strickland, do you know the names of any communists who utilize the public parks and public buildings in Dade County, Florida, during the past four years?

Mr. Hawes: If your Honor please, I object to that on the ground that it is irrelevant and immaterial and embracing the matters that your Honor has already ruled out of this hearing and the matters that your Honor has ruled that we are not entitled to go into on depositions.

The Court: What was the question?

Reporter: Do you know the names of any communists who utilize the public parks and public buildings in Dade County, Florida, during the past four years?

The Court: Objection sustained.

Mr. Simon: Mr. Strickland, the same question with regards to communist organizations, communist front organizations and communist dominated organizations.

Mr. Hawes: Same objection, if your Honor please.

The Court: Objection sustained.

Mr. Simon: Of the fourteen persons whose names were tendered to Reverend Edward T. Graham for identification, do you know whether any of those have been living in Dade County, Florida, during the past five years?

Mr. Hawes: If your Honor please, we object on the same grounds. It is irrelevant and immaterial.

[fol. 409] The Court: That is a matter with respect to which the court has already made a ruling. Consistent with the previous ruling of the court the objection is sustained.

Mr. Simon: All right, sir.

No further questions.

Mr. Hawes: Come down.

Mr. Simon: That is our case.

Mr. Hawes: I would like to call Mrs. Perry back to the stand for about two more questions on cross examination.

Mrs. Perry will you take the stand up here please.

Mr. Graves: What is the purpose of recalling her?

Mr. Hawes: Further cross.

Mr. Graves: I submit he has cross examined the witness already.

The Court: He made a motion for a couple of questions. Let the witness be recalled to the stand. It is a matter that is discretionary. If it seems abusive, the court will not hear it.

MRS. RUTH WILLIS PERRY, upon being recalled, testified further as follows:

Cross examination.

By Mr. Hawes:

Q. For the record, you are the same Mrs. Ruth Perry who [fol. 410] testified this morning under oath?

A. Yes.

Q. Mrs. Perry, you work for the public library in Dade County, don't you?

Mr. Graves: Objection if your Honor please, those questions have all been asked and answered.

The Court: Objection overruled.

Mr. Hawes: That's true.

A. I work for the Miami Beach Public Library.

By Mr. Hawes:

Q. How long have you worked there, Mrs. Perry?

Mr. Graves: If your Honor, please, this question has been asked before on cross examination.

The Court: Hasn't she already answered that before?

Mr. Hawes: No, sir, I haven't asked her how long she worked there.

A. Ten years.

Mr. Hawes: About ten years. How long has it been publicly known that you were the secretary of the Miami Branch of the NAACP in Miami, Mrs. Perry?

A. I believe publicly known since the first State Legislative Committee Investigation.

Q. In 1957?

A. I believe that's so.

[fol. 411] Q. You still retain that job there?

A. Yes.

Mr. Hawes: No further questions.

#### COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Graves: If your Honor please, we move to strike all the questions and answers, all the questions propounded to this witness as well as all the answers on the grounds that there was no redirect examination of this witness in the case in chief for Theodore Gibson and that she was not called as a witness in any other case. Now she is being cross examined in an entirely different case against Edward T. Graham. There is no direct examination whatsoever to base cross examination on, just hanging up there in the air.

The Court: Well the court is of the opinion that the motion to recall the witness was well taken, well founded.

and that it was a reasonable motion and the motion to strike ought to be denied. It is so ordered.

Mr. Graves: I don't want to belabor the point but she was called as a witness in the case against Theodore R. Gibson. Now if Mr. Hawes is going to call her as his own witness or as a rebuttal witness against Edward T. Graham, that is his privilege but he calls her in cross examination.

Mr. Hawes: I will call her my witness or anybody's that you want to. I don't care whose witness she is. The testimony [fol. 412] money is all I wanted out there.

The Court: He called her and the Court for the purpose of the record will hold that she was called as a witness for the petitioner.

Mr. Hawes: I have no objection to the record showing that I called her as my own witness.

The Court: The Court specifically holds that Mrs. Perry was called as a witness for the petitioner.

Mr. Graves: As I said before I don't want to belabor the point but I understood your Honor to rule that she was to be submitted for cross examination, which happened. It is not a question of cross examination here.

Mr. Hawes: Does that conclude your case.

Mr. Simon: Yes. Your Honor in view of the lateness of the hour, if counsel for the state committee will waive argument, I will be happy to do so and I can wind up about as good as he can. I think about as loud but if he is going to waive argument, so will I. I think your Honor has heard the testimony and is fully familiar with the issues.

Mr. Hawes: Well, if your Honor please, I know that your Honor has all of the law that is applicable to either one of these cases before you—as I view it, maybe counsel will agree and maybe he won't—in this case I think it is a question of your Honor evaluating the effect if any that the testimony produced today has had on the record that is [fol. 413] filed in the case before your Honor. Beyond that it is just a matter of the court going through the transcript of this hearing before the committee and determining what if any questions your Honor thinks the witness should be ordered to answer, and I think the court is perfectly capable of doing that without me or Mr. Simon arguing as far as



that goes ~~but~~ but I want to be of whatever assistance I can to the court, if the court wants argument on it.

The Court: Suppose you gentlemen submit a memo.

Mr. Simon: That is satisfactory.

The Court: In five or ten days. It is not a matter of waiving the preparation of the memorandum by the other parties but you may want to argue the mandatory requirement with reference to some questions, not as to others. You may well want to analyze several questions propounded and your contentions with reference whether it is proper that the question be answered.

Mr. Hawes: May I ask your Honor, I am perfectly agreeable to the notion of submitting a written memorandum but I think you should have a definite date set by which all memoranda should be in and I would hope for a decision shortly thereafter because our time is drawing upon us.

The Court: You represent the petitioner, Mr. Hawes, say ten days in which to file your memorandum and furnish opposing counsel with a copy and opposing counsel ten [fol. 414] days.

Mr. Simon: From the date of receipt?

The Court: Yes.

Mr. Simon: That is satisfactory to Graham.

Mr. Graves: That is satisfactory to Gibson.

Mr. Hawes: All right, your Honor.

The Court: Just as soon as the memoranda have been received—

Mr. Hawes: That will be a total of twenty days and I assume we can look forward to a decision shortly thereafter?

The Court: Not necessarily a total of twenty.

Mr. Hawes: I will get mine as soon as possible.

The Court: Maximum of twenty.

Mr. Hawes: You objected to my offer of this one exhibit on the ground I offered it in your case. I would like to offer Petitioner's Exhibit 1 for Identification in evidence again please.

Mr. Simon: Our objection is upon the ground of relevancy, materiality, competency and the best evidence rule. There is no showing that the original of this isn't available. I think that should preclude it.



Mr. Hawes: Gibson said that was his signature and he recognized the other signatures on it and it shows Louis Popp signing that resolution of the NAACP as one of the [fol. 415] officers. It is contrary to both the proffers he has made in this record when he says this Committee has no evidence that Louis Popp was ever connected with the NAACP.

The Court: Both proffers were denied. If you want to put it in the record you might proffer it in the record. It will go in the record as a matter of course but the proffers having been denied to which your proffered instrument you are now offering is directed. I can't perceive the materiality of it.

Mr. Hawes: I will make it a part of the record as an exhibit for identification.

[fol. 416] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 417] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA, IN CHANCERY

No. 16820

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE, Petitioner,

vs.

THEODORE R. GIBSON, Respondent.

ORDER DIRECTING RESPONDENT TO APPEAR AND PRODUCE  
RECORDS—July 19, 1960

This cause coming on to be heard upon the petition for Rule to Show Cause, the Rule to Show Cause, and the respondent's Return thereto, and the Court having taken testimony and having heard fully from the counsel for both parties and having considered the memorandum submitted by counsel for both parties, and the Court being fully advised in the premises, finds:

(1) There is no competent believable evidence before the Court showing any substantial risk of a deterrent effect which could reasonably be anticipated to result from a disclosure of association with the National Association For The Advancement Of Colored People.

(2) The facts and circumstances of the proceeding at bar are such that the interest of the State is so grave, pressing, and compelling that the interest of the individual respondent should yield to the public interest or to the essential requirements of the welfare of the State and he should respond to the subpoena duces tecum and the orders of the Committee and produce before the Committee the membership list of the Dade County branch of the National Association For The Advancement Of Colored People for the purpose of consulting the said list and answering pertinent and appropriate questions, even if the record did show a substantial risk of a deterrent effect which could be reasonably anticipated to result from a disclosure of association with the National Association For The Advancement Of Colored People.

(3) The record clearly demonstrates and the case of Gibson vs Florida Legislative Investigation Committee, Florida 108 So 2d 729, makes it clear that the production of said list and the consultation of the same for the purpose of answering pertinent and lawful questions is material to the subject matter under inquiry and was so demonstrated and the respondent's refusal to produce said list [fol. 418] and consult the same is without privilege, justification, or authority in law.

(4) Chapter 59-207 Laws of Florida 1959, establishing the Committee, is constitutional.

Accordingly, upon consideration, it is,

Ordered, Adjudged and Decreed that the respondent, Theodore R. Gibson, is hereby directed and ordered to be and appear before the Legislative Investigation Committee of the Florida Legislature in House Committee Room 49 of the State Capitol Building at Tallahassee, Florida, at 10:00 o'clock A. M., July 27, A. D., 1960 and then and there to produce before the said Committee the membership list

of the Dade County branch of the National Association For The Advancement Of Colored People and then and there refer to such records and answer any question or inquiry regarding any individual whose association with the National Association For The Advancement Of Colored People is shown to be pertinent to the inquiry, or other pertinent questions with reference thereto as authorized and approved in the case of Gibson vs Florida Legislative Investigation Committee, supra, and upon his failure to do so, he shall be deemed, held, and constituted guilty of a direct and criminal contempt of this Court and punished accordingly.

Done and Ordered this the 19th day of July, A. D., 1960.

W. May Walker, Circuit Judge.

[fol. 421]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF FLORIDA IN AND FOR LEON COUNTY

No. 16820

[Title omitted]

PETITION FOR STAY ORDER—Filed July 19, 1960

To: Honorable W. May Walker, Circuit Judge.

Comes now the respondent, by his undersigned attorneys and respectfully the Court for the entry of an order staying all proceedings before this Court pending the preparation and filing an appeal to the Supreme Court of Florida to have reviewed the judgment of this Court.

2.

Respondent represents unto the Court that involved in this cause are matters of basic constitutional rights of the individual under the Constitution of the State of Florida and the Constitution of the United States which questions have been decided against the respondent.

3.

That this Court has ordered the respondent to appear before the Florida Legislative Investigation Committee on July 27, 1960 and have with him the membership list of the Miami Branch of the National Association for the Advancement of Colored People for the purpose of referring to them to enable the Committee to ascertain whether certain individuals are members of said organization. That this ruling is seemingly inconsistent with recent rulings of the Supreme Court of the United States.

4.

That the order of this Court makes it mandatory that the respondent comply with the order of this Court on July 27, 1960 or else be punished for contempt of this Court. That because of the nearness of the date aforesaid, it will be impossible for the respondent to have this Court's orders reviewed by appeal unless this Court enter its order staying all proceedings in this case for a period of [fol. 422] time sufficient to permit the respondent to obtain an opportunity to compile the necessary transcript of record and submit a supporting brief during the usual course of business of the court of appellate jurisdiction.

Wherefore respondent prays that this Honorable Court enter its order staying all further proceedings herein until such time as the Supreme Court of Florida or other proper appellate court rule on the appeal.

G. E. Graves, Jr. and Robert L. Carter, Attorneys  
for Respondent, By: G. E. Graves, Jr., of Counsel,  
802 N.W. 2nd Ave., Miami, Fla.

: [fol. 423]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF FLORIDA IN AND FOR LEON COUNTY

No. 16820

[Title omitted]

ORDER DENYING STAY OF PROCEEDINGS—July 19, 1960

This cause this day coming on to be heard upon the respondent's petition for an order staying any further proceedings in this cause in order to permit the respondent appeal the judgment of this Court and the Court having considered the petition it is thereupon

Ordered and Adjudged the petition of the respondent to stay these proceedings to permit the respondent appeal the judgment of this Court be, and the same is hereby denied.

Done and Ordered this 19th day of July, 1960.

W. May Walker, Circuit Judge.

[fol. 425]

FURTHER PROCEEDINGS BEFORE THE FLORIDA LEGISLATIVE  
INVESTIGATION COMMITTEE  
COMMITTEE ROOM, No. 50  
STATE CAPITOL BUILDING  
TALLAHASSEE, FLORIDA

Transcript of Testimony—Wednesday, July 27, 1960

APPEARANCES:

Representative W. Cliff Harrell, Chairman, Presiding.  
Mark R. Hawes, Chief Counsel for the Committee.  
R. J. Strickland, Investigator for the Committee.

[fol. 426] The Chairman: The hearings, of November 4th and 5th, 1959 which were recessed because of the refusal of certain witnesses to answer questions by counsel.

will be resumed at this time. We have been instructed by the Leon Circuit Court to resume our hearings this morning and under our Rule adopted in 1957, adopted by this committee, at any duly called committee hearing one or more members would constitute a quorum. I state that merely for clarification of the fact that I am sitting alone as a committee this morning. I will ask legal counsel to call the witnesses.

Mr. Hawes: Reverend Gibson and Reverend Graham are present. Reverend Gibson, will you come forward, please?

Mr. Chairman, I would like to have the other witness remain out of the hearing room while this witness testifies, please.

The Chairman: All right.

Theodore R. Gibson was called as a witness and after being duly sworn was examined and testified as follows:

Questions by Mr. Hawes:

[fol. 427] Q. For the record please state your name and address.

A. My name is Theodore R. Gibson. I live at 14680 Harrison Street, and that's in Richmond Heights, Dade County, Florida.

Q. You're the same Theodore R. Gibson who was subpoenaed at a previous hearing of this committee held on November 4, 1959 as a witness?

A. I am.

Q. And you appeared at that time, did you, Reverend?

A. I did.

Q. And your subpoena on that occasion, I believe, called for the production of certain membership lists and records of the Dade County branch of N.A.A.C.P. which you declined to bring with you at that meeting?

A. That's right, sir.

Mr. Reeves: Excuse me, Mr. Hawes. Let the record show that Reverend Gibson represented by counsel.



Mr. Hawes: Yes, and the counsel is Grattan E. Graves, Jr., I believe it is from Miami, Florida and Frank D. Reeves of Washington, D. C.

Q. Now, Reverend, you are also the same Theodore Gibson who was named as a respondent in a petition filed by this committee in the Circuit Court of Leon County seeking an order compelling you to bring with you before this committee to consult a membership list of the Dade County [fol. 428] Branch of the N.A.A.C.P., aren't you?

A. Yes, sir, I am.

Q. And, of course, you're aware of the fact that the Circuit Court in Leon County has ordered you to bring that list with you here today. Is that correct?

Mr. Reeves: May we ask, Mr. Hawes, if the order of the court may be made a part of this record?

Mr. Hawes: Yes, I think that would be appropriate. I don't have a certified copy of it but with agreement of counsel I'd be glad to undertake to get a certified copy of Judge Walker's order and make it a part of this record.

Q. You are aware of the fact that that order was entered, are you, Reverend, by Judge Walker requiring your presence here with the membership list of the N.A.A.C.P.?

Mr. Reeves: May we say, Mr. Hawes, that the order speaks for itself because you appreciate the order does have some qualifications in terms.

Mr. Hawes:

Q. Do you have with you this morning, Reverend, the membership list and record of the Miami Branch of the N.A.A.C.P.?

A. I do not, sir, but I have a statement I want to read for the sake of the record.

Q. Is that in the nature of an explanation of your failure to have them here?

[fol. 429] A. Yes, sir.

Q. Has it been prepared by your counsel? I just want to determine the nature of it before we read it into the record.

Mr. Reeves: This is his statement.

A. This is my statement.

Mr. Hawes:

Q. Well, is it in the nature, Counsel, of his legal position before the Committee?

Mr. Reeves: It sets forth his entire position on this question.

Mr. Hawes: May I examine it briefly before you read it, please? (Examining statement). All right, Counsel, you may proceed to read that into the record.

A. I have not brought the membership lists with me. At the hearing of this Committee on November 4 and 5 of last year, I told the Committee of the organization's stand on Communism, and I left with the Committee resolutions which have been passed by the N.A.A.C.P. at each of its annual conventions, beginning in 1950, in which opposition to Communist ideology was declared in unequivocal terms and in which membership in the N.A.A.C.P. was barred to Communist and other subversives. I might add that at its most recent Convention in St. Paul, Minnesota in June last, this anti-Communist policy was reaffirmed. [fol. 430] I also brought to the attention of the Committee the statement from J. Edgar Hoover in his recent book "Masters of Deceit," congratulating the N.A.A.C.P. on its success in keeping the organization free of Communist infiltration. Moreover, I pointed out to the Committee the methods followed to make sure that no officers of the N.A.A.C.P. were subversives, and while no such careful scrutiny can be made as to members, if it is brought to the attention of anyone in the N.A.A.C.P. that a member is engaged in subversive activities, steps will be taken to sever his relationship with the organization. The organization's policy has been strictly enforced in the Miami Branch during the past five years of my administration. I know of no person in the Branch who is a member of the Communist party or of any other subversive group at present or has been during my regime. I have advised the Committee that if they knew of any subversives who are N.A.A.C.P. members, if they bring that to my attention, steps will be taken immediately to sever their relationships with the N.A.A.C.P. So much for the Communist

issue. We have attempted to explain to the Committee the reasons for our reluctance to make public our membership lists, or in this instance, to bring the lists before the committee and to consult it in order to answer questions by the Committee. I have expressed a willingness, and [fol. 431] at the last hearing I did in fact advise the Committee to the best of my knowledge and belief, to tell the Committee whether persons named as subversives by the Committee are members of the N.A.A.C.P. As I recall, uniformly my answers to such questions were in the negative. I have offered to do the same in respect to thirty-two people whom Mr. Hawes requested that I check against the Branch membership lists in the Committee's presence. I can see no difference in bringing before this committee the N.A.A.C.P. membership lists and as various alleged subversives are named, going through my files and advising the Committee whether these persons are members of the Association and in turning the membership lists over to the Committee. If I bring the N.A.A.C.P. membership lists before this Committee to check it for the purpose of answering questions with respect to N.A.A.C.P. memberships, the fears, concern and worry about exposure and reprisals based upon N.A.A.C.P. association will be more firmly embedded in the public's mind in Florida than was before. All that the general public will understand, and particularly members and prospective members of the N.A.A.C.P., is that N.A.A.C.P. membership is subject to the scrutiny of Florida officials. In our judgment this is as gross an interference with freedom of [fol. 432] association and freedom of speech and will have as great a detrimental effect to such freedoms as if we were required to turn over the names of our members to the Committee. I might add that while the Committee purports to be making a bona fide investigation into Communist infiltration into the Association, that its own chief witness in my presence, has not supported the Committee's charges. The record shows that he has disclaimed knowledge of N.A.A.C.P. activity by most of the persons named as Communists by the Committee. More importantly, the record shows that his association with the N.A.A.C.P. as an officer ended prior to 1950 and that he has not been a

member in over two years. Since as I have explained to the Committee, membership in the Association is on a current calendar basis, the testimony of persons associated with the N.A.A.C.P. before 1950 as to membership of Communist or subversives in the organization, does not justify violation of First Amendment rights of the organization's members in the face of the Association's firm anti-Communist stand and absence of any proof that the organization has or is engaged in any subversive activity. While the activities of the Association in fighting for freedom from racial discrimination and for equality for Negroes may seem revolutionary to the present power structure in [fol. 433] Florida, and in respect to the mores of the South, it is true to and in accord with the most fundamental tenets of the American social order. In conclusion let me say that I have cooperated with the Committee and will cooperate with the Committee in the future to the best of my ability, even though I doubt that the Committee is seriously interested in anything other than an effort to curb the activities of the Association in seeking to eliminate racial segregation and other forms of discrimination practiced in this State. However, that cooperation will not extend to the point of allowing the Committee to violate my constitutional rights, the constitutional rights of the N.A.A.C.P. or the constitutional rights of N.A.A.C.P. members and contributors.

Mr. Hawes:

Q. Does that conclude your statement, Reverend?

A. Yes, sir.

Q. And does either of your counsel have any further legal objection to state?

Mr. Reeves: I think, Mr. Hawes, I think we, of course, repeat, reiterate the same objections for the record in terms of the constitutional objections that were advanced at this point in the previous hearing without duplication. [fol. 434] Mr. Hawes: Fundamentally, as I understand it, Counselor, this may become important to your position, your stand legally is based on the First Amendment right of freedom of association under the Federal Constitution.

Mr. Reeves: That's correct.

Mr. Hawes:

Q. Now, Reverend Gibson, I take it from the statement you read into the record that you still do and will continue to decline to bring the record of the membership of the Dade County Branch of the N.A.A.C.P. before this hearing for the purpose of consulting it here to answer questions?

A. I do.

Q. Now, Reverend, when you were here before, you answered some questions relying upon your recollection alone without the benefit of your records to consult them with regards to whether or not to your knowledge certain individuals that I named to you were or were not members of the N.A.A.C.P. in your time and in your recollection. Do you remember that?

A. I do, sir. That answer, however, was based on the fact that you had made available a list of names both in the paper and to us and I looked and I told you at that time they were not—

Q. Not current?

[fol. 435] A. They were not members. I told you that.

Q. Now, that is to the best of your knowledge?

A. Yes, sir.

Q. Now, Reverend, will you tell us, please, whether or not Reverend Edward T. Graham is a member of the Dade County Branch of the N.A.A.C.P.?

Mr. Reeves: Mr. Hawes, I want to raise an objection at this point. As I understand it, the Chairman at the outset of this reconvened hearing stated the specific purpose of the hearing and the order which was read into the record also indicated that Reverend Gibson was returned to or was to return before this committee for the specific purpose of answering those questions he declined to answer at the previous hearing. If you will recall, he was excused at the conclusion of the last hearing subject to what further action might be taken with respect to the particular questions which he was asked and refused to answer and the further action of the committee in that regard—

The Chairman: Now, I believe that my opening statement was the hearings of November 4 and 5 of 1959 were



resumed, that they had been interrupted, based on the refusal of certain witnesses to answer questions.

Mr. Reeves: I think the record will show, Mr. Harrell, [fol. 436] that at the conclusion of his testimony at the last hearing, he having refused to answer certain questions, he was excused.

Mr. Hawes: I don't think the record will show that Reverend Gibson ever refused to answer a question before this committee at that hearing. I think it will simply show that he declined to bring the membership list. It was another witness that wouldn't answer the questions and I believe that's right.

Mr. Reeves: Well, I say refused to answer questions based upon the membership list, consultation of membership lists; but what I'm merely trying to say, Mr. Hawes, it was not our understanding that this hearing today would go beyond his being called and under the order pursuant to which he was returned here today. We submit it's our position that it's limited.

Mr. Hawes: Now, in reply to that, Counsel, I don't want to take advantage of anybody. I want to read, which I'm sure you'll verify in your files is a true but uncertified copy of the order of Judge Walker returning this witness before this committee and the order provides, "Ordered, Adjudged and Decreed that the respondent, Theodore Gibson, is hereby directed and ordered to be and appear before the Legislative Investigation Committee of the Florida [fol. 437] Legislature in House Committee Room 49 of the State Capitol Building, at Tallahassee, Florida, at 10:00 o'clock a.m. July 27, A.D., 1960 and then and there to produce before said committee the membership list of the Dade County Branch of the National Association for the Advancement of Colored People and then and there refer to such records and answer any question or inquiry regarding any individual whose association with the National Association for the Advancement of Colored People is shown to be pertinent to the subject under inquiry or other pertinent questions with reference thereto as authorized and approved in the case of Gibson v. Florida Legislative Investigation Committee, supra, and upon his failure to do so he shall be deemed, held and constituted guilty of



a direct and criminal contempt of this court and punished accordingly." Now, it frankly is my position, and that order clearly states that he is returned here for the purpose of answering all lawful questions propounded to him and in no way is the field limited to any of the people he was asked about before. I'll state for the record and for your information that when a witness finally refuses, you quit asking him. I had a lot of other people I wanted to ask him about but when he's not going to comply with the order, you just stop. There's no use to go on and on ad [fol. 438] infinitum asking questions about people when the witness has made his position clear and it is our position that in no way is this hearing limited to the specific people about which we inquired before.

Mr. Reeves: Well, I'd like to say, Mr. Hawes, it's our position, of course, that with reference to these other persons about whom you asked at the last hearing, obviously you had and did lay a predicate which would make the question, at least give some basis for the pertinency of the inquiry. That has not been done in this instance and further, as I read and understand that order, the questions for which Reverend Gibson was returned by order of the court to this committee, not by the subpoena of this committee but by the order of the court to this committee, were those questions which would be based upon his reference to the membership records and if I understand the position which you have just stated, he having already advised you he does not have the records, does not intend to bring the records before the committee, it would seem to me that the same justification you suggested for not continuing to ask him further questions allegedly based on those records would attend so that we submit at this point any further inquiries or any inquiries of Reverend Gibson beyond those which would be based upon [fol. 439] the records which he has not brought and which would be consistent with the direction of the Court as to the purpose for which he has been returned, or ordered to be returned to this committee, would be improper.

Mr. Hawes: Well, if you're raising the question of pertinency, Counselor, I'll be glad to demonstrate the pertinency of the question.

Mr. Reeves: We're raising more than that. He was ordered returned here not by the subpoena of this committee because he answered the subpoena of this committee at the last hearing and at the conclusion of his testimony he was excused by the Committee. Thus, we submit he is here now pursuant to the order of the court and the order of the court limited the scope of the examination for which purpose he is returned to this Committee and, therefore, he is not obliged, we submit, to answer any questions beyond the scope of that order and I submit that the question you just asked him with reference to Reverend Graham is beyond the scope of that order.

Mr. Hawes: Well, in view of that objection raised on the question of pertinency, I'm going to state the pertinency of that question. Reverend Gibson, we have information that the Reverend Edward T. Graham is and has been a member of the N.A.A.C.P. in Dade County and has [fol. 440] been a high official of the N.A.A.C.P. in Dade County; that in addition to that over a period of years he is or has been a member of certain organizations which have been listed as subversive by the Committee on Un-American Activities and various other committees of the National Congress such as the Southern Conference for Human Welfare, The Southern Conference Educational Fund; that he has appeared and addressed meetings of the Soviet-American Friendship Association, of the F.D.R. Club and that as recently as March 12, 1960 he has participated in a meeting in Orlando, Florida, called by and sponsored by this subversive organization, The Southern Conference Educational Fund; that he journeyed from Miami to Orlando to that meeting with a man named Carl Braden, who is a high official in that subversive organization; that present there was a man named Dr. James Dombrowski, who is, according to our information, a high official and member of a number of outright Communist-front organizations which have been so labeled; that he is associated there and participated in that meeting which was for the purpose of organizing a deliberately planned agitation of sit-downs and other demonstrations in Florida and to coordinate other organizations operating in the field of race relations in Florida and it's my purpose to

determine whether or not under those conditions Reverend Graham is, in fact, a member of the Dade County Branch [fol. 441] of the N.A.A.C.P. and whether or not, within your knowledge as President of that outfit, you went to that meeting in Orlando March 12, 1960 as an official representative of your organization and now I ask you again, after having made that statement, is Reverend Edward T. Graham a member of the Dade County Branch of the N.A.A.C.P. presently?

A. For the reasons already stated by my counsel along with the fact that I do not believe that the question is pertinent and also that I rely upon my rights under the first amendment, I refuse to answer the question.

Q. Now, you understand, Reverend, and I want the press to understand this, I'm not making any accusations that the Reverend Graham is a member of any Communist Party and I'm not making any accusation against you or anybody else. I'm stating the basis merely for the pertinency, we want to find out if you will cooperate, you were here before, you answered all of the questions I asked you based on your recollection about individuals. You have never consulted your records before this committee at any rate and I wanted to know if you would extend us the same cooperation in answering this question relying on your memory alone which you did before and which you have just read in your statement to the committee here that [fol. 442] you would extend to this committee in the future. Now, is your position still the same? Do you decline to answer that question?

A. Yes, sir.

Mr. Hawes: All right, Reverend, thank you.

Now, would you call Reverend Graham?

Reverend, will you come back? I want to go into something else with you or attempt to.

Mr. Reeves: Now, for the record I would like to object to this further proceeding.

Mr. Hawes: Well, this is something he injected in his opening statement or his position he read into the record and I just wanted to clarify this. Would you mark this please as Committee's Exhibit 1.

(Exhibit so marked)

Mr. Hawes:

Q. Reverend, if you would be kind enough to read that and see if you recognize that as being a copy of the resolution on Anti-Communism that your organization has passed each year annually, I believe you said since 1950 or thereabouts up to the present time which you designated in your statement as being very recent?

Mr. Reeves: May I say, Mr. Hawes, this purports to be the resolution adopted at the Forty-First Annual Convention [fol. 443] on June 23, 1950. As I understand it, Reverend Gibson was not at that time present at that convention. In substance this appears to be consistent with the resolutions that have been adopted at subsequent conventions but to be able to say specifically that this is the same language without having them to compare, we're not sure. With that qualification I think he would answer your question in the affirmative.

Mr. Hawes: Well, that actually is a copy the Reverend gave us some time back but if there's any question about the accuracy of it, would you like to check it against your records?

Mr. Reeves: Well, may we just qualify it to the best of his knowledge this is an accurate copy, not having available for the purposes of comparing it with the other. I don't think there's any substantial difference.

Mr. Hawes:

Q. This committee exhibit No. 1, then, is in substance a resolution that the N.A.A.C.P. in their National Convention has repeatedly readopted since about 1950?

A. Right, yes, sir.

Mr. Hawes: All right, Reverend, thank you.

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[fol. 444] EDWARD T. GRAHAM was called as a witness and after being duly sworn was examined and testified as follows:

Questions by Mr. Hawes:

Q. Reverend, for the record, would you state your full name and your present address, please?

A. Edward T. Graham, 356 N. W. 9th Street, Miami, Florida.

Q. And for the record you have counsel present with you today?

A. Yes, I do.

Q. Would you give us his name and address?

A. Robert J. Ramer, 205 N. W. 27th Avenue, Miami, Florida.

Mr. Ramer: For the record may we have an objection to the constitution of the committee as a one-man committee on the basis that it is not within the power of the committee under the Act. With all due respect for Mr. Harrell, we just want to form an objection in the record.

Mr. Hawes: That's quite all right. You have a right to make an objection.

Mr. Ramer: Thank you.

Mr. Hawes:

Q. Now, for the record, Reverend, I just want the record complete. You have other counsel who are not present today, don't you?

[fol. 445] A. Yes, I have.

Q. And that's Tobias Simon of Miami and Howard W. Dickson?

A. That's correct.

Q. And they represented you before the committee and in the Circuit Court and other courts in relation to this matter up to the present and Mr. Simon called me and told me that he might not be able to be here today and I assume Mr. Ramer was associated for the purpose of being here on account of his conflict in his schedule?

A. That is correct.

Q. But you do have these other two counsel as well as the one you have present here?

A. Yes.

Q. Now, Reverend, you're the same Reverend Graham who was subpoenaed, were you not, to a hearing of this committee here in Tallahassee on November 4, 1959?

A. Yes, I am.

Q. And you appeared at that hearing?

A. Yes, I did.

Q. And I on behalf of the committee propounded certain questions to you which you declined to answer and you stated instead of answers your legal position for declining the questions?

A. And the reasons.

[fol. 446] Q. And you are the same Edward T. Graham who was named as a respondent in a petition filed by this committee in the Circuit Court of Leon County to secure an order compelling you to return to this committee and answer the questions that he had propounded to you?

A. Yes, I am the same.

Mr. Rainer: If I may interrupt, Mr. Hawes, I assume you'd follow the same procedure as the previous witness, a copy of this order will be made a part of this record?

Mr. Hawes: Yes.

Mr. Rainer: Thank you, sir.

Mr. Hawes:

Q. And you're aware of the fact that an order of the circuit court has been entered requiring you to come back here and answer specifically four specified questions that you declined to answer and any other questions that were demonstrated to be pertinent to the inquiry?

A. That's my understanding.

Mr. Rainer: If I may be permitted to state the witness' technical position, we recognize the order of the court for the four specific questions previously propounded. We don't believe the court had jurisdiction to enter an order saying that he was obliged to answer any other lawful and pertinent questions.



[fol. 447]

Mr. Hawes:

Q. You do acknowledge that the order has been entered; however, and you are aware of it?

A. Yes, sir.

Q. Now, Reverend, none of the questions that you declined to answer at the hearing on November 4, 1959 and one of the questions which the Circuit Court of Leon County has ruled that we demonstrated the pertinency of at the last hearing and has now ordered you to answer, is, are you presently a member of the N.A.A.C.P. Will you now answer that question?

A. I'm going to decline to answer the question on the basis that the objections which have been formerly given in the record and on the basis of two additional grounds.

Q. Right there I just want the record to be clear, Reverend. When you say the objections formerly given into the record, you're referring to the objection stated by yourself and counsel?

A. By myself and counsel.

Q. At the hearing of November 4, 1959. Is that correct?

A. Yes.

Q. And you want to add two additional grounds to that objection now?

A. Yes, I do, sir.

[fol. 448] Q. Go right ahead.

A. One is the continued harassment of individuals, particularly when the newspaper reports are new when it's the cause of this committee to convene again, as soon as this announcement appears in newspapers, then we commence to get telephone calls again of threats and there is another reason that counsel will propound at this time.

Mr. Ramer: The additional reason would be the question as framed is unclear and is not made any clearer in any respect by the court order. The key word in the question being "presently" and it is impossible for the witness to understand whether "presently" means at the time of the first hearing, at the time of the court hearing or now and this will be another objection. If I may amplify the objection the Reverend has already stated, he has reference to threats and harassing telephone calls which

occurred from the time of the last court hearing to the present.

Mr. Hawes:

Q. Now, Reverend, to clarify the question slightly, have you been a member of the N.A.A.C.P. in Dade County at any time in the last year?

Mr. Ramer: To which question he would object as being outside the purview of this hearing.

[fol. 449] Mr. Hawes:

Q. Now, Reverend, the court ordered you also to answer a question which was propounded to you at page 94 of the record of the hearing of November 4, 1959 and which the court has specifically ruled was demonstrated at that time to be pertinent to the inquiry and which question you then refused to answer and that question is, "Reverend, now, do you know or have you in the past five years or six years known a person named Augusta Birnberg of Dade County to be a member of the N.A.A.C.P. in Dade County". Will you now answer that question, please?

A. I decline to answer that question also on the grounds which have been previously stated in the record.

Q. Now, when you say that, you mean the objections stated November 4th and your additional objections stated this morning?

A. Yes.

Q. Reverend, another question propounded to you at the hearing of November 4, 1959 which you declined to answer and which the Circuit Court of Florida, Leon County, has now specifically held the pertinency of which was clearly demonstrated and has ordered you to answer, was the question that appears on pages 96 and 97 of the record of the hearing of November 4th and is as follows: [fol. 450] "Now, Reverend, I ask you if you do now or have in the past known a man named Edward Waller, as a member of N.A.A.C.P. in Dade County, have you known or do you now know Edward Waller to be or to have been a member of the N.A.A.C.P. in Dade County?" Will you answer that question?

A. I decline now to answer that question on the grounds which were stated previously for the record and on the additional grounds submitted at this hearing.

Q. Now, Reverend, another question that's in the same category of the other three, if I might just use that phrase instead of going through all this, prefaced to the other three questions, another question the Circuit Court specifically ordered you to answer is, "Do you know James Nimmo, Abe Sorkin, Charles Marks, Myron Marks, Leo Sheiner, Charles Smolikoff, Tess Kantor, Leah Adler Benomovsky, Louis Popps, Manny Groff, Bobbie Groff or Michael Shantzek, or any of them to be members of the N.A.A.C.P. in Dade County?"

Mr. Ramer: If counsel please, I think the first word of that question is "Did" rather than "Do", is it not?

Mr. Hawes: "Do".

Mr. Ramer: "Do"?

Mr. Hawes: "Do".

Mr. Ramer: I'm sorry.

[fol. 451]

Mr. Hawes:

Q. Will you answer that question.

A. I decline to answer on the same grounds. Testimony is already given and is part of the records and the additional objection given at this hearing.

Q. Now, Reverend, I'll ask you if you know a man named Carl Braden?

A. Counselor, I refuse to answer that question also on all of the grounds which have been previously given and on the two which have been given here this morning and on the basis of the fact that this question is beyond the purview of this hearing and the request of the court.

Q. Now, in answer to that, Reverend, the order of Judge Walker, the Circuit Court of Leon County, which returns you before this committee this morning, ordered you to answer the four questions which I have already asked you specifically and each of them as well as all other lawful, pertinent questions propounded by this committee and it is our position that you are here under Judge Walker's order for the purpose of answering any question that is

pertinent to the inquiry as defined to you in the Chairman's opening statement at the hearing of November 4, 1959 and it is for that reason that I asked you if you know this man, Carl Braden. Is your position still the same?

[fol. 452] A. Yes, it is the same.

Q. Among the objections you raised at the hearing of November 4 was one of pertinency and I assume that you are raising that question again here, or that objection again to the question that I have just asked?

A. Yes.

Q. Well, the pertinency of that question, Reverend, is this. Information in the possession of this committee indicates that Carl Braden is a high official of an organization that has been termed subversive by the House Un-American Activities Committee and as a matter of fact, I think the Internal Securities Committee of the Senate. As a matter of fact, he is a member of the Southern Conference of Human Welfare and The Southern Conference Educational Fund at present. We have further information that on or about the 12th day of March, 1960 that a meeting was held in Orlando which was called and sponsored by this subversive organization by Mr. Braden and a man named James Dombrowski of New Orleans, who is also a high official of that organization; a meeting of various individuals and representatives of various organizations in this state for the purpose of laying a deliberate plan to cooperate between these organizations to take certain action in regards to the field of race relations in the State of Florida and we have further information that [fol. 453] on or about that time you journeyed from Dade County, Miami, to Orlando with Mr. Braden on March 11 and attended that meeting and participated in that meeting at which James Dombrowski was present as well as others whom we have information are and have been members of Communist Organizations some of them, and at least one of the parties there, we have information, is an actual member of the Communist Party; and I desire to find out if you are a member of the N.A.A.C.P. and if so, whether or not your journey to Orlando was that under the official auspices of the Dade County N.A.A.C.P. and whether you were aware of the affiliations of some of the

people you were meeting there with and the organization, the nature of the organization that was calling and sponsoring that meeting which is currently bringing people from out of the State of Florida here to intervene in the race relations of this State and that is the pertinency of the question that I propounded to you and after having made that statement, I ask you again, do you know Carl Braden?

A. Counselor, I decline to answer the question now propounded to me for all of the reasons which have already been given and that even the knowledge of Carl Braden does not give pertinency to the question in relationship to the rights of an individual in the State.

[fol. 454] Q. Did you on the 11th of March, 1960 go with Carl Braden to Orlando from Miami and did you attend that meeting on March 12th in Orlando that I have talked about here?

A. I refuse to answer that question under the same conditions.

Q. And will you state whether or not you went there as a representative of the Dade County Branch of the N.A.A.C.P.?

A. Refuse on the same conditions.

Q. And any other questions that I ask you about that meeting, your position will be the same, will it, Reverend?

A. Will be the same, yes.

Mr. Hawes: Well, there's no use to clutter up the record. You may be excused.

The Chairman: The hearing will now be recessed until further called by the Chairman.



[fol. 456]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA, IN CHANCERY

No. 16820

[Title omitted]

## PETITION FOR ADJUDICATION OF CONTEMPT

—Filed August 15, 1960

Comes now the Florida Legislative Investigation Committee, by and through its undersigned counsel, and files this its petition for the entry of a final order adjudicating the respondent, Theodore R. Gibson, guilty of a direct and criminal contempt of this Court and providing for his punishment accordingly, and respectfully shows unto the Court as follows:

(1)

The petitioner committee is the petitioner which instituted the original proceedings in the above-styled cause under the authority of Chapter 59-207, Laws of Florida 1959, and the respondent, Theodore R. Gibson, is the original respondent in said cause.

(2)

That on July 12, 1960 this Court entered its order, after due deliberation upon the original petition, return thereto, and the evidence before the Court, ordering the respondent to be and appear before the Legislative Investigation Committee of the Florida Legislature in House Committee Room 49 of the State Capitol Building at Tallahassee, Florida, at 10:00 o'clock A. M., July 27, A. D., 1960 and then and there to produce before the said Committee the membership list of the Dade County branch of the National Association For The Advancement Of Colored People and then and there refer to such records and answer any question or inquiry regarding any individual whose association with the National Association For The Advancement Of Colored People is shown to be pertinent to



the inquiry, or other pertinent questions with reference thereto as authorized and approved in the case of Gibson vs Florida Legislative Investigation Committee, supra, and [fol. 457] upon his failure to do so, he shall be deemed, held, and constituted guilty of a direct and criminal contempt of this Court and punished accordingly."

## (3)

That pursuant to the authority duly vested in the petitioner committee by Chapter 59-207 and at the direction of this Court's order of July 12, 1960, the petitioner committee duly called and held a hearing at the time and place designated in this Court's order of July 12, supra; a certified copy of the official court reporter's transcript of said hearing is filed herewith, marked "Exhibit A" and made a part hereof as fully as though set forth herein *hac verba*. That as shown by the transcript above-referred to, the respondent, Theodore R. Gibson, while stating that he had the records called for in this Court's order in his possession, willfully failed, refused and neglected to comply with the lawful order of this Court and the subpoena duces tecum previously served upon him in that he refused and declined to bring and have the records designated in the Court's order with him before the Committee for the purpose of consulting the same as the Court directed, and this without stating any sufficient privilege or basis, in law or in fact, for such refusal.

Wherefore, petitioner respectfully prays that the Court duly issue a Rule Nisi to be directed to the said respondent, Theodore R. Gibson, and served upon him, requiring him to appear before this honorable Court on a day and time certain, and then and there to show cause, if any he can, why this Court should not enter its order finally adjudging the said respondent guilty of a direct and criminal contempt of this Court, and that upon said hearing that this Court will enter its final order adjudging the said respondent guilty of contempt of this Court and providing accordingly for his punishment.

Mark R. Hawes, Chief Counsel for the Florida Legislative Investigation Committee.

*Duly sworn to by Mark R. Hawes, jurat omitted in printing.*

{fol. 458}

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT

IN AND FOR LEON COUNTY, FLORIDA, IN CHANCERY

No. 16820

[Title omitted]

## ORDER TO SHOW CAUSE--August 15, 1960

This cause coming on, on the petition of the Florida Legislative Investigation Committee, and it being made to appear by said petition and the accompanying exhibits filed therewith, that you, Theodore R. Gibson, having been duly ordered by this Court on July 12, 1960 to appear before the said Committee as a witness on July 27, 1960 at 10:00 o'clock A. M. in Committee Room Number 49, State Capitol Building, Tallahassee, Florida, to appear and testify and to bring with you to said Committee hearing the membership list of the Dade County chapter of the NAACP for the purpose of consulting the same and answer lawful and pertinent questions propounded to you; and that you, after having appeared at the time and place designated in this Court's order, willfully failed, refused and neglected to bring and have with you the said records as ordered, without stating any sufficient privilege or claim in law for your refusal so to do; this is, therefore, to command that you, Theodore R. Gibson, do be and appear before the Honorable W. May Walker, one of the Judges of the above-styled Court, at ten o'clock A. M. on the 30th day of August, 1960, then and there to show cause, if any you can, why this Court should not enter its final order adjudging you to be guilty of direct and criminal contempt of this Court and punishing you accordingly.

Done and Ordered in Chambers at Tallahassee, Leon County, Florida, this the 15th day of August, 1960.

W. May Walker, Circuit Judge.

[fol. 459]

{File endorsement omitted}

IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA, IN CHANCERY

No. 46820

[Title omitted].

ANSWER TO RULE TO SHOW CAUSE—Filed August 30, 1960

Comes Now the Respondent, Theodore R. Gibson, by and through his undersigned counsel, and files this his Answer to Rule to Show Cause in the above entitled case, and respectfully shows as follows:

1. Respondent admits the allegations in paragraph 1 of the petition in the above entitled case.

2. Respondent admits that the petitioning committee did subsequent to the aforesaid Order of July 12, call and hold a hearing in the State Capitol Building, Tallahassee, Florida, and that as shown in the transcript, which has been made a part of these proceedings as Exhibit A thereof, did refuse to comply with the order of the Court.

3. Respondent contends that Chapter 59-207 of the Laws of Florida 1959, violates the due process clause of the 14th Amendment of the Constitution of the United States, in that its grant of authority to the committee is too broad, too vague, too indeterminate and arbitrary. Under the statute there are no proper standards or guides to the committee respecting the scope and extent of its power. Persons called upon to testify before the committee, including this respondent, cannot know the proper scope and extent of the committee's authority and, therefore, cannot and are not properly apprised, of what acts or failures or refusals on their part may or may not constitute a violation of the aforesaid Chapter 59-207. Since criminal penalties may flow from such violations as is shown by these proceedings, it is clear that Respondent has been denied due process of law in being subjected to criminal penalties without knowing the extent and nature

of the charge or of the offense with which they are to be charged.

4. Respondent contends that the inquiries of the committee violate the Constitution and laws of the United States, and more particularly those provisions of the Constitution securing rights of freedom of association secured under the due process clause of the 14th Amendment of the United States. Respondent has refused to obey an order of the committee requesting him as a custodian of the membership list of the Dade County branch of the National Association For the Advancement of Colored People to bring such lists to the committee for the purpose of referring to it in order to "answer any question or inquiry regarding any individual whose association with the National Association For the Advancement of Colored People is shown to be pertinent to the inquiry, or other pertinent questions with reference thereto as authorized and approved in the case of Gibson vs Florida Legislative Investigation Committee." Such order of the committee violates rights of freedom of association, because compliance therewith would tend to cause members and prospective members and or contributors to fear reprisals in the nature of economic and physical intimidation. Moreover, in the prior hearings hereto evidence was produced showing the nature and extent of the fears among persons in the State of Florida of being identified as members of the NAACP, and that acts of harassment, intimidation and economic reprisals had been taken against persons publicly identified as associated with NAACP. The transcript of these proceedings are attached hereto as Exhibit A to this Answer, and is made a part hereof as if it were set out in terms.

5. That Respondent contends that the Court Orders violate the Constitution and laws of the United States, and more particularly those provisions of the Constitution securing rights of freedom of association secured under the due process clause of the 14th Amendment of the United States. Respondent has refused to obey an order of the Committee requesting him as a custodian of the membership list of the Dade County branch of the National Asso-

ciation for the Advancement of Colored People to bring such lists to the Court for the purpose of referring it to (sic) in order to "answer any question or inquiry regarding any individual whose association with the National Association for the Advancement of Colored People is shown to be pertinent to the inquiry, or other pertinent questions with reference thereto as authorized and approved in the case of *Gibson vs Florida Legislative Investigation Committee*". Such order of the Court violates rights of freedom [fol. 462] of association, because compliance therewith would tend to cause members and prospective members and/or contributors to fear reprisals in the nature of economic and physical intimidation. Moreover, in the prior hearings hereto evidence was produced showing the nature and extent of the fears among persons in the State of Florida of being identified as members of the NAACP, and that acts of harassment, intimidation and economic reprisals had been taken against persons publicly identified as associated with NAACP.

Wherefore, having fully answered the Rule to Show Cause, the Respondent prays that the Rule be dismissed with prejudice.

G. E. Graves, Jr., 802 N. W. 2nd Avenue, Miami, Florida; Robert L. Carter, 20 West 40th Street, New York, N.Y.; Frank D. Reeves, 473 Florida Avenue, N. W., Washington, D. C.

[fol. 463]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA, IN CHANCERY

No. 16820

[Title omitted]

ORDER DENYING SUPRESEDEAS AND GRANTING STAY  
—August 30, 1960

This cause coming on on the respondent's Motion for Supersedeas pending appeal to the Supreme Court of Florida, and the Court being fully advised in the premises and having considered the argument of counsel for both parties hereto is of the opinion that no substantial question is involved in said appeal that has not been previously settled in prior litigation between the parties hereto and that no sufficient showing has been made to justify further delay of the proceedings before this court; and the Court being further of the opinion that an unjustified delay will work to the prejudice of petitioner Committee in that it has but a limited time in which to complete the work assigned to it by the Legislature, it is upon consideration Ordered, Adjudged and Decreed That

(1) The respondent's Motion for Supersedeas pending appeal to the Supreme Court of Florida be and the same is hereby denied;

(2) The respondent Theodore R. Gibson is hereby granted a stay of execution of the judgment and sentence of this Court pending the Supreme Court of Florida's disposition of the respondent's application to said Court for a Constitutional Stay Writ provided said application for said Constitutional Stay Writ is filed instantler and brought on for hearing at the earliest possible time the Supreme Court can hear and determine the same.

Done and Ordered in Open Court this 30th day of August, 1960.

W. May Walker, Circuit Judge.



[fol. 464]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF FLORIDA IN AND FOR LEON COUNTY

No. 16820

[Title omitted]

NOTICE OF APPEAL—Filed August 30, 1960

The respondent, Theodore R. Gibson, takes and enters his appeal to the Supreme Court of Florida to review the final order of the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County, bearing date the 30 day of August 1960 entered in the above styled cause and recorded in Chancery Order Book 74 at Page 105, on the 30 day of August, 1960 and all parties to this cause are called upon to take notice of the entry of this appeal.

G. E. Graves, Jr. and Robert L. Carter, Attorneys  
for Respondent, By G. E. Graves, Jr., Of Counsel,  
802 N. W. 2nd Avenue, Miami, Florida.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 465]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE 2ND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA, IN CHANCERY

No. 16820

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE, Plaintiff,

vs.

THEODORE R. GIBSON, Respondent.

ADJUDICATION OF CONTEMPT—August 30, 1960

This cause coming on to be heard on this Court's order to show cause issued August 15, 1960, and the respondent's

return thereto, and there being before the Court the respondent Theodore R. Gibson, and his counsel Robert L. Carter, Frank D. Reeves and Grattan E. Graves, Jr., and Mark R. Hawes representing the Florida Legislative Investigation Committee, and the Court having heard fully from the counsel for both sides and having thoroughly considered all argument together with the petition for the rule to show cause and the exhibits thereto attached, and the Court being fully advised in the premises, finds as follows:

That on July 19, 1960, this Court entered its order, previously orally announced, on July 12, 1960, requiring the respondent Theodore R. Gibson to appear before the petitioner Committee on July 27, 1960, and then and there bring and have with him the membership list of the Dade County Chapter of the NAACP for the purpose of consulting the same in answering lawful and pertinent questions propounded to him; or upon his failure to do so that he be held and deemed guilty of direct and criminal contempt of this Court and punished accordingly.

The Court further finds that the respondent Theodore R. Gibson did appear before the petitioner Committee on July 27, 1960, as ordered by the Court but that the said respondent wilfully failed, refused and neglected to bring and have with him and to consult for the purpose of answering lawful and pertinent questions the said membership list, without stating any sufficient claim or privilege in law or in fact for his refusal to have said list with him for the said purpose, and the respondent Theodore R. Gibson saying or offering nothing that would lawfully preclude the Court from entering its adjudication of guilt and pronouncement of sentence of the law.

Now, Therefore, it is the order and judgment of this Court that the said respondent Theodore R. Gibson is in direct and criminal contempt of this Court; it is further the judgment of the Court and the sentence of the law that you, Theodore R. Gibson, for your said contempt, be incarcerated in the Leon County Jail for a period of six (6) months and in addition thereto that you pay and forfeit

to the State of Florida for the benefit and use of Leon County a fine in the amount of Twelve Hundred Dollars (\$1,200.00), and upon failure to pay said fine that you serve an additional period of six months in the Leon County Jail.

Done and Ordered in Open Court at Tallahassee, Leon County, Florida, this 30th day of August, 1960.

W. May Walker, Circuit Judge.

[fol. 467]

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF FLORIDA IN AND FOR LEON COUNTY

No. 16820

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 6, 1960.

Comes now the respondent, Theodore R. Gibson, within ten (10) days immediately following the filing of his notice of appeal and assigns the following errors upon which the appellant will rely on appeal:

I.

The trial court erred in holding that Chapter 59-207, Laws of Florida, 1959, is valid.

II.

The trial court erred in holding that constitutional guarantee of rights of freedom of association did not excuse or justify appellant's refusal to respond to the subpoena duces tecum or to produce the N.A.A.C.P. membership lists before the respondent Committee.

III.

The trial court erred in holding that disclosure of association with the N.A.A.C.P. was not likely to have a de-

terrent effect on exercise of rights of freedom of association.

#### IV.

The trial court erred in holding that even though such deterrent effect would occur, appellant could be compelled [fol. 468] to make the contested disclosures to the Committee.

#### V.

The court's judgment and order are in direct and irreconcilable conflict with *Watkins v. United States*, 354 U.S. 178; *Sweezy v. New Hampshire*, 354 U.S. 234; *N.A.A.C.P. v. Alabama*, 357 U.S. 449; *Bates v. Little Rock*, 361 U.S. 461.

#### VI.

The trial court deviated from the standards established by this Court in *Gibson v. Florida Legislative Investigation Committee*, 108 So. 2d 729.

#### VII.

The trial court erred in ordering appellant to respond to the subpoena duces tecum or to produce the membership list of the Dade County N.A.A.C.P. Branch before the Committee.

#### VIII.

The trial court erred in adjudging appellant in contempt.

G. E. Graves, Jr. and Robert L. Carter, Attorneys  
for Respondent, By G. E. Graves, Jr., Of Counsel,  
802 N.W. Second Avenue, Miami, Florida.

[fol. 469]

## IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1960

Case No. 30,661

THEODORE R. GIBSON, Appellant,

vs.

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE, Appellee.

OPINION—Filed December 19, 1960

An Appeal from the Circuit Court for Leon County,  
W. May Walker, Judge.

G. E. Graves, Jr., and Robert L. Carter, for Appellant.

Mark R. Hawes, for Appellee.

THORNAL, J.

By direct appeal, we are requested to review an order of the circuit court upholding the validity of Chapter 59-207, Laws of Florida, 1959, and adjudging petitioner Gibson guilty of contempt of Court for failure to comply with a subpoena duces tecum issued by appellee Committee.

We must pass upon the constitutionality of Chapter 59-207, Laws of Florida, 1959. We must also determine whether the compelled response to the subpoena duces tecum would be violative of various constitutional rights asserted by appellant.

[fol. 470] Appellant Gibson is admittedly the president of the Miami branch of the National Association for the Advancement of Colored People. He had been such for at least five years prior to the critical hearing on November 5, 1959. At the time of the Committee hearing, appellant also admitted that he held in his custody the then current list containing the names of the members of Miami branch of the N.A.A.C.P. He had been served with a subpoena duces tecum directing him to have the list available at the hearing of the Committee on November 5, 1959. The rec-



ord reveals that prior to the time appellant Gibson was called to testify, an investigator of appellee Committee identified by name some fifty-one persons whom he stated were known members of the Communist Party, or its affiliates. All of these had in times recently past resided or engaged in various activities in Dade County, Florida. The investigator identified fourteen of these people by name and Communist Party membership card number. He testified that these fourteen had been known to have participated in the affairs of Miami branch of the N.A.A.C.P. When appellant Gibson was called to testify, the attorney for the appellee Committee identified an allegedly known Communist by name and requested Gibson to refer to the membership list and advise whether such allegedly known Communist was listed as a member of Miami branch of N.A.A.C.P. Gibson refused. He stated that he would not bring the list to the Committee hearing as required by the subpoena. For various reasons which we shall mention, he refused to comply with the prior decision of this Court in the same matter by having the list available for reference by him only, even though he had been assured that he would not be required to file the entire list in evidence where it would be subject to public inspection. Following [fol. 471] the procedure delineated by the Statute, the appellee Committee requested the circuit judge to issue a rule nisi and grant to appellant an opportunity to answer the questions or else show cause why he should not be charged in contempt. The judge directed the witness to have the membership list available and answer the questions propounded. Again appellant declined. Thereupon, he was adjudged to be in direct contempt of Court and was sentenced to a term of six months in the Leon County jail and to pay a fine of \$1,200. We are now requested to reverse this order.

It is the contention of the appellant Gibson that Chapter 59-207, Laws of Florida, 1939, is unconstitutional. He further contends that the order which compels him to have available the membership list of N.A.A.C.P. for reference by him only as an authentic basis for his testimony before the appellee Committee does violence to his rights of free-



dom of speech and assembly. Similar constitutional rights of all members of N.A.A.C.P. are allegedly violated.

The appellee Committee contends that the subject statute is constitutional. It asserts that the compelled disclosure of the associational relations of specifically identified alleged subversives does no violence to the constitutionally protected rights of appellant Gibson or other legitimate good faith members of N.A.A.C.P.

We consider it totally unnecessary to burden this opinion with any elaborate dissertation on the constitutionality of Chapter 59-207, Laws of Florida, 1959. For all practical purposes, this statute is identical with Chapter 57-125, Laws of Florida, 1957, which we upheld against the same identical assault by this same appellant in *Gibson v. Florida Legislative Investigation Committee*, Fla. 108 So. 2d 729, cer. den., 360 U. S. 919. The 1959 statute is [fol. 472] merely a legislative renewal and continuation of the authority of the appellee Committee which had its origin in the 1957 statute which we discussed in considerable detail in the case last cited. The points there made as the basis for the assault on the constitutionality of the statute are repeated in the instant appeal. The appellant certainly has a right to raise doubts as to the validity of an act of the Legislature. However, we do not deem it necessary to repeat in detail the reasons which we have heretofore given for upholding an identical act. We will here do no more than to hold Chapter 59-207, supra, constitutional on the authority of *Gibson v. Florida Legislative Investigation Committee*, supra.

In our opinion in the case last cited the constitutional rights of the rank and file bona fide members of Miami Branch of N.A.A.C.P. were frankly recognized and given judicial protection against illegal encroachment. Appellant, however, again asserts in behalf of himself and for the benefit of all other members of N.A.A.C.P. a constitutional freedom of speech and assembly which includes associational privacy. He relies on the First Amendment to the Constitution of the United States. Because of the due process provisions of the Fourteenth Amendment to the Constitution of the United States, appellant insists

that the states are bound to recognize these so-called First Amendment rights.

While renewing his reliance on *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 78 S. Ct. 1163, appellant urges additional support from *Bates v. City of Little Rock*, 361 U. S. 516, 80 S. Ct. 412. If the factual situation were analogous to the last cited cases we would, of course, deem ourselves bound by those decisions and rule accordingly. However, the instant factual situation is markedly different.

[fol. 473] In *N.A.A.C.P. v. Alabama*, supra, the State attempted to require the Association to file its entire membership list with the Secretary of State, allegedly in order to determine the nature of the business of the nonprofit corporation. Similarly, in *Bates v. City of Little Rock*, supra, the municipality by ordinance attempted to require the Association to file its entire membership list with city officials in order to enable them to determine the applicability of certain license tax requirements. In both instances the State agency attempted to require the publication of the entire membership of the Association. In both instances community antipathy to *N.A.A.C.P.* was held to be an established fact. In both instances there was a showing deemed to be adequate to the effect that the revelation of the list of members would completely stultify the functioning of the Association because of fear of economic and social retribution and actual threats and fears of threats of physical violence. In other words, it was held to have been shown in those cases that if the names of the good faith members of *N.A.A.C.P.* were publicly revealed, this fact alone would have such a deterrent effect on their continued membership or the acquisition of new members that the organization would completely disintegrate. In this manner the memberships' freedom of speech and right of assembly would be totally destroyed.

If we were here dealing with a compulsory indiscriminate disclosure of the entire membership list of *N.A.A.C.P.* we would be confronted with the very serious problem of balancing appellant's rights of free speech and association against potential encroachments by threatened governmental action. However, the instant situation does not make it necessary to evaluate the claimed deterrent effect

of revealing the membership list against a showing of [fol. 474] subordinating public interest. We recognize the rule that when the so-called deterrent influence by contemplated governmental action is established, the burden moves to the government to prove clearly and unequivocally an impelling public need that justifies subordinating the constitutionally assured private right to the exercise of governmental power. *N.A.A.C.P. v. Alabama*, supra; *Bates v. City of Little Rock*, supra. The mere fact that a particular governmental power is admitted to exist, does not in every instance justify its exertion. Even when not absolutes in themselves, constitutionally provided individual rights will be subordinated to the exercise of a particular power of government only in those instances when it is made clear and beyond question that governmental action is essential to the public interest.

In the case now here all that has been required is that appellant have available records from which to testify regarding the associational status of certain specifically named individuals who have otherwise been identified in this record as having subversive connections. *Uphaus v. Wyman*, 360 U. S. 72.

As was the case in *Uphaus* the testimony in this record unequivocally reports that numbers of Communist Party members or affiliates have on various occasions attended meetings or participated in the affairs of Miami branch of N.A.A.C.P. This in itself suggests adequate justification for the inquiry upheld by the circuit judge. The announced purpose of the inquiry is to determine whether persons with Communist connections or affiliations are infiltrating the legitimate organizations of the State. Under the rule which we announced in *Gibson v. Florida Legislative Investigation Committee*, supra, and followed by the circuit [fol. 475] judge here, there is no danger of encroachment upon the constitutionally guarded rights of appellant or other legitimate, bona fide members of N.A.A.C.P. The rule which we follow does not disturb the delicate equilibrium between the associational rights of rank and file members of N.A.A.C.P. on the one hand and the power of the State to ascertain the whereabouts of those who pose serious threats to its security on the other.

Appellant simply urges us to construct a constitutional city of refuge which opens its precincts to those who seek to speak freely and assemble righteously in the advocacy of their just causes. In so doing, however, he would have us provide ideological asylum for those who would destroy by violence the very foundations upon which their governmental sanctuary stands. An appeal so illogical, we think, cannot merit judicial sanction.

We conclude, as we have done before, that the appellant as the official custodian of the subject records can be required to refer to them in order to authenticate his testimony. We do not construe the order of the circuit judge as directing that the records be publicly exposed or delivered to the committee or to any one else or to be filed in this cause. As so construed we can find no constitutional objection to the subject order. On the contrary, it comports with our mandate in *Gibson v. Florida Legislative Investigation Committee*, *supra*. This is not an order directing the revelation of the rank and file members of Miami branch of N.A.A.C.P. Under the subject order, those who are legitimate and good faith members of the Association are adequately protected against the alleged retribution which it is claimed would follow upon the unjustifiable publication of the entire list of members.

[fol. 476] On the other hand, the particular individuals whose otherwise subversive connections have been revealed, are not entitled to the same associational privacy. Stated otherwise, when an individual is identified as one who advocates the violent destruction of the system from which he seeks protection, then the public interest in obtaining light on his other associational activities is sufficient to subordinate his claimed rights of free speech and assembly to the interest of the general good. *Barenblatt v. United States*, 360 U.S. 109.

There is no error in the order under attack. It is, therefore, affirmed.

Thomas, C.J., Terrell, Hobson, Roberts, Drew and O'Connell, JJ., concur.

[fol. 477]

## IN THE SUPREME COURT OF FLORIDA

No. 30,661

[Title omitted]

## PETITION FOR REHEARING

Comes now the appellant, Theodore R. Gibson, and respectfully petitions the Court for a rehearing in the light of the decision of this Court entered on the 19th day of December, 1960 for the following reasons:

## 1.

The Court based its entire opinion upon the ground that the appellant could be required to bring the membership list of the Miami Branch of the National Association for the Advancement of Colored People before the Legislative Investigating Committee for the purpose of authenticating his testimony before the Committee because appellant's constitutional rights had been superseded by the right of the State of Florida to investigate communists infiltration into the organization. In reaching this conclusion the Court overlooked the fact that actually the State of Florida in this cause in any way has not demonstrated or shown such a subordinating interest except by innuendo and naked allegations which could very well be applied to any legitimate organization in the State of Florida.

## 2.

The Court overlooked the fact despite the fact that the burden is upon the state to first prove a subordinating interest as a predicate for in any way interfering with or impinging upon the constitutional rights of the appellant to freedom of speech and association, the Investigating Committee here has been permitted to subpoena N.A.A.C.P. members and require them to bring to the committee the membership list solely upon the uncorroborated testimony [fol. 478] of an investigator who under established procedure could not be examined or cross examined by the

appellant in an effort to determine whether as a matter of law he must forego the enjoyment of his constitutionally guaranteed rights.

## 3.

That the Court overlooked the fact neighbor (sic) before the Committee or before the court below has there been any showing that the Miami Branch of the N.A.A.C.P. been infiltrated by subversives which fact might have justified investigation by the State if such were the case.

## 4.

The Court overlooked the fact that the appellant did in fact appear before the Investigating Committee and freely testified as to whether or not persons inquired about were or had been members of the N.A.A.C.P. and that he testified that all persons inquired about as being suspect of subversion by the committee were not members of the organization.

G. E. Graves, Jr., Attorney for Appellant.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 479]

IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—January 17, 1961

The appellant in the above cause has filed a petition for a rehearing and reconsideration of the cause set forth in the opinion and judgment of said Court filed December 19, 1960, and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.



[fol. 480]

## IN THE SUPREME COURT OF FLORIDA

No. 30,661

[Title omitted]

APPLICATION FOR ORDER STAYING FURTHER PROCEEDINGS  
PENDING DISPOSITION OF APPELLANT'S PETITION TO THE  
UNITED STATES SUPREME COURT FOR A WRIT OF CERTIO-  
RARI

Comes now the appellant, by his undersigned attorneys and petition the Court for an order staying further proceedings in this in the event the appellant is denied a rehearing in order to permit the appellant the necessary time to apply to the Supreme Court of the United States for a writ of certiorari.

The appellant respectfully requests this relief in order have (sic) the Supreme Court of the United States to settle apparently conflicting constitutional rights of the appellant and those rights and powers of the Florida Legislative Investigation Committee.

Robert L. Carter, 20 West 40th Street, New York,  
New York, and G. E. Graves, Jr., 802 N. W. 2nd  
Avenue, Miami, Florida, Attorneys for Appellant,  
By: G. E. Graves, Jr.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 481]

## IN THE SUPREME COURT OF FLORIDA

[Title omitted]

## ORDER STAYING EXECUTION OF JUDGMENT—January 17, 1961

Upon consideration of the petition of the appellant in the above cause, it is ordered that the execution and enforcement of the judgment of this Court affirming the judgment of the Circuit Court for Leon County, entered

December 19, 1960, which on petition for rehearing was adhered to by this Court on January 17, 1961, in the above cause be and is hereby stayed for sixty (60) days from this date to enable the petitioner to have a reasonable time in which to apply for and to obtain, if he can, review of said cause by the Supreme Court of the United States, and if such proceeding is perfected and filed in the Supreme Court of the United States within said sixty (60) day period, that said judgment be further stayed until said proceeding is disposed of by the Supreme Court of the United States, or until the further order of this Court. This order is subject to cancellation at any time if petitioner fails to prosecute such review with reasonable dispatch.

[fol. 484] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 485]

SUPREME COURT OF THE UNITED STATES

No. 835, October Term, 1960

THEODORE R. GIBSON, Petitioner,

vs.

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE.

ORDER ALLOWING CERTIORARI—May 8, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

## **Jurisdiction**

The judgment of the Supreme Court of Florida was entered on December 19, 1960 (R. 478). Application for rehearing was denied on January 17, 1961 (R. 479), but on the same day, in a separate order, execution and enforcement of the judgment was stayed for 60 days to permit petitioner to seek a review of this cause in this Court, with the further proviso that if application for review was made here within the time allowed, the judgment was to be stayed further until the matter has been determined by this Court (R. 481). Jurisdiction of this Court to review the judgment below rests on Title 28, United States Code, Section 1257(3).

## **Question Presented**

Whether, under the circumstances of this case, the state may compel petitioner, without violating rights of freedom of association and privacy therein guaranteed under the Fourteenth Amendment to the Constitution of the United States, to bring to hearings of the respondent committee the membership list of petitioner's organization for the purpose of answering questions concerning membership therein of persons allegedly members of the Communist Party or Communist-front organizations, in the absence of some showing of a nexus between the Communist Party or Communist-front organizations and their subversive activities and petitioner's organization.

## **Statute Involved**

CHAPTER 59-207, LAWS OF FLORIDA, 1959

AN ACT to provide for the creation and appointment of a committee of the Legislature to make investigations of the activities in this state of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida; for the conduct

of hearings and the subpoenaing of witnesses; providing for circuit courts to enforce committee's processes; for a report of such committee to the 1961 Legislature; authorizing the employment of specialized assistance by the committee; providing for the expenses of the committee; providing an effective date; and providing for the extension of the joint committee set up by Chapter 57-125, Laws of Florida, 1957, until the committee created by this Act is duly appointed and organized.

WHEREAS, the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956, has expired with the filing of its report to the legislature as provided by said act; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, will expire with the filing of its report to the legislature as provided by said act; and

WHEREAS, the said two committees' records and reports disclose a great abuse of the judicial processes of the Courts in Florida, as well as certain activities on the part of various organizations and individuals which constitute violence or the threat thereof, or violations of the laws of this state and which activities are inimical to the well-being of the majority of the citizens of this state; and

✓ WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, was created to complete the work commenced by the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956; and

WHEREAS, there is in the committee's files and records evidence and sources of evidence disclosing that the Communist party, its fronts and apparatus and other subversive organizations, are seeking to agitate and engender ill-will between the races of this and other states; and

WHEREAS, the joint committee set up by chapter 57-125 has diligently pressed its investigations to determine the exact nature, extent and effect of subversive penetration and influence on the actions of certain organizations and individuals active in Florida; and

WHEREAS, said committee has been prevented from ascertaining the same because of the deliberate and almost unanimous action of the witnesses before it in resorting to litigation to frustrate said committee's investigations, which resulted in said committee being mired down in numerous law suits in the Circuit Courts and the Supreme Court of Florida, all of which litigation has ended in the Supreme Court of Florida having twice upheld the authority of said committee to pursue the investigations it has undertaken, and which litigation has now culminated in the United States Supreme Court having issued a stay order against said committee on an unsworn and unverified application for stay pending application by certain witnesses subpoenaed before the committee for certiorari in the United States Supreme Court; and

WHEREAS, because of lack of time said proceedings still are lodged undisposed of in the United States Supreme Court with the committee powerless to proceed with its investigations because of that Court's stay order; and

WHEREAS, the issues embraced in said litigation involve fundamental principles of State's rights and State's sovereignty as against centralized Federal power and Government by judicial decree and constitute a fight for State sovereignty which this State can ill afford to abandon; and

WHEREAS, there still exists the same grave and pressing need for such a committee to exist in the interim between the 1959 and 1961 sessions of the legislature of Florida, to continue and complete the above two committees' work, and to participate in and contest the efforts represented by

the above referred to litigation to whittle away further at this State's rights and sovereignty, and to be every ready to investigate any agitator who may appear in Florida in the interim.

NOW THEREFORE, the following bill is proposed to be enacted by the legislature because of all the foregoing:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. There is hereby created a special committee of the legislature to be composed of ~~seven~~ (7) members, three (3) of whom shall be appointed from the membership of the state senate by the president, and four (4) of whom shall be appointed from the membership of the state house of representatives by the speaker. The members of said committee shall serve as such until discharged by the president of the senate and the speaker of the house of representatives upon receipt of their report at the regular 1961 session of the legislature.

Section 2. It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state. Such investigations shall be conducted with the purpose of reporting to this legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the state.

Section 3. (1) The committee is authorized to employ such experts, clerical and other assistance as may be required; to require by subpoena or otherwise the attendance



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JAMES R. BROWNING, Clerk

IN THE

**Supreme Court of the United States**

October Term, 1960/62

No. ~~8888~~ 6

THEODORE R. GIBSON,

*Petitioner,*

v.

FLORIDA LEGISLATIVE INVESTIGATION  
COMMITTEE.

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF FLORIDA**

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IN THE

**Supreme Court of the United States**

**October Term, 1960**

**No.**

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THEODORE R. GIBSON,

*Petitioner,*

**v.**

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE.

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF FLORIDA**

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered on December 19, 1960.

**Opinion Below**

The opinion of the Supreme Court of Florida, reported at 126 So. 2d 129, is appended hereto, *infra*, at page 23.<sup>1</sup>

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<sup>1</sup> The opinion of the court below in the companion case, **Graham v. Florida Legislative Investigation Committee**, 126 So. 2d 133, is also appended hereto *infra* at page 29. The court there held that a deterrent effect upon the exercise of freedom of association resulting from the disclosure of an associational relationship with the National Association for the Advancement of Colored People had been established and, therefore, that the compelled disclosure of Graham's membership in the N.A.A.C.P. was not within the state's constitutional power. The thrust of the inquiry, the court said, was not Graham's subversive activities but his association in a legitimate organization. This was not proper, and his adjudication for contempt was, therefore, reversed.

of such witnesses and the production of such papers, bonds and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may deem necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any circuit court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the court shall constitute a direct and criminal contempt of court and the court shall punish said witness accordingly.

Section 4. The committee shall report to the 1961 regular session of the legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. The expenses of this committee, including necessary and regular expenses shall be paid from legislative expense, such total expenses not to exceed sixty-seven thousand five hundred dollars (\$67,500.00), which shall be expended under the direction of the committee.

Section 5. The joint committee set up by chapter 57-125, Laws of Florida, 1957, is hereby extended in all respects so that it may continue to discharge its responsibilities as a party litigant on behalf of the state of Florida in the litigation above referred to until the appointment and organization of the committee provided for in this act shall become effective.

Section 6. This act shall take effect immediately upon becoming a law.

## Statement

### Background

The instant controversy has had a lengthy prologue. While the existence of the respondent committee dates from enactment of Chapter 59-207, Laws of Florida, 1959, the investigation which it is undertaking began in 1956. In that year pursuant to Chapter 31498, Laws of the Extraordinary Session of Florida, 1956, a committee of the legislature was established to make investigations into the activities of organizations and individuals "advocating violence or a course of conduct which would constitute a violation" of the laws of Florida. That committee undertook an investigation of the activities of the National Association for the Advancement of Colored People in Florida, on the theory that the organization's activities designed to undermine racial discrimination resulted from the infiltration and influence of Communists.

The committee filed a report with the legislature in 1957. Except for the enactment of Chapter 57-125, Laws of Florida, 1957, which created a committee to continue and complete the work of its predecessor, no legislation dealing with the infiltration of subversives into legitimate organizations operating in the field of race relations was recommended or adopted at the 1957 session of the Florida legislature.

The 1957 committee, in furtherance of its investigation of the extent of infiltration and influence of subversives on the N.A.A.C.P., held hearings in Miami and sought to secure the membership list of the Miami Branch of the N.A.A.C.P. so that the committee could determine whether members of the Communist Party were members of the Miami Branch. Disclosure of the names of N.A.A.C.P. members was refused.

/ Counsel for respondent sought the aid of the courts, with the result that petitioner and the other N.A.A.C.P. officials involved were ordered to turn over the N.A.A.C.P.



membership list to the committee. Before final adjudication at the trial court level, the Supreme Court of Florida granted a stay pending a hearing and determination on the merits. After hearing, that court held that Chapter 57-125, Laws of Florida, 1957, was valid. It concluded that the committee was pursuing a valid legislative objective in seeking to uncover and determine the extent of Communist infiltration in the N.A.A.C.P. Because of the overriding importance of the committee's investigation, the court concluded that *N.A.A.C.P. v. Alabama*, 357 U. S. 449, was inapposite and that the custodian of the N.A.A.C.P. membership list could be required to bring the members' names to committee hearings for the purpose of checking the list in answering inquiries about the N.A.A.C.P. membership of persons designated as subversive. See 108 So. 2d 729. Application for writ of certiorari was denied by this Court. 360 U. S. 919.

Before this Court acted, the committee, established pursuant to Chapter 57-125, Laws of Florida, 1957, was due to expire, and in establishing the instant committee, under Chapter 59-207, Laws of Florida, 1959, the life of the old committee was extended "to enable it to discharge its responsibility" in the litigation then pending in this Court until the appointment and organization of the instant committee had become effective.

In 1959, as in 1957, no legislation respecting Communist infiltration into organizations operating in the field of race relations resulted from the committee's investigation. The instant committee was created to press and complete the investigation undertaken by the 1956 and 1957 committees to determine the nature and extent to which petitioner's organization had been subjected to subversive penetration and influence.

#### **The November 4-5, 1959 Hearings in Tallahassee, Florida**

On October 30, 1959, petitioner was ordered to appear before the respondent committee on November 4, 1959,

in the State Capitol Building at Tallahassee and to bring the membership list in his possession or of which he was custodian pertaining to the identity of the members and those paying dues to the local and state N.A.A.C.P. organization (R. 4-5). Petitioner appeared as ordered, and it was established that he had custody of the records which the committee sought (R. 11, 12, 14).

At the outset the Chairman of the respondent committee read a statement setting forth the scope of the inquiry with which the committee was concerned (R. 19). The remarks consisted of a verbatim recital of Chapter 59-207, Laws of Florida, 1959 (R. 19-28), followed by a declaration that the hearing would be concerned with the activities of various organizations operating in Florida in the fields of "race relations . . . coercive reform of social and educational practices and mores by litigation and pressured administrative action . . . labor . . . education . . . and other vital phases of life in this State" . . . the aims, objectives and activities of the Communist Party and Communist-front organizations, and the degree, if any, to which Communists or communistic influence had succeeded "in penetrating, infiltrating and influencing the various organizations and members thereof which have been, or are now, operating in the above fields" (R. 28-29). The Chairman disassociated the committee from any intent to give the impression that the mere calling a witness to testify signified that the person called was a Communist. Each witness was given permission to make a short disclaimer of membership in the Communist Party, if he so desired (R. 30).

Arlington Sands was not present (R. 15), and the first witness bearing on this controversy was R. J. Strickland, employed as an investigator by the committee. He testified that he had conducted investigations concerning the activities of Communists in the South (R. 49); that an Augusta Birnberg was a member of the Communist Party (R. 50); that Edward Waller had now left the Party but was once a member, who had then been under instructions to infiltrate

the N.A.A.C.P., and that he had attended N.A.A.C.P. meetings on occasion in Dade County (R. 51); that James Nimmo, now in New York State, was once a Communist, but was no longer associated with the Party (R. 51); that Abe Sorkin was a member of the Party and a member of the N.A.A.C.P. (R. 52); that Charles Marks was a member of the Party (R. 52); that Myron Marks was a member of the Party (R. 53); that deposit slips showed that Leo Sheiner, a member of the Communist Party, was a contributor to the N.A.A.C.P.<sup>2</sup> (R. 53); that Charles Smolikoff was a Communist (R. 54); that Tess Kantor was a Communist (R. 54-55); that Leah Adler Benomovsky, formerly of Dade County, was a Communist (R. 55); that Louis Popps had been a member but was no longer believed to be associated with the Party (R. 55); that Emanuel "Manny" Graff (R. 55) and Bobbie Graff (R. 56), formerly of Miami, were members of the Communist Party; that Michael Shantzek (R. 56) was a member of the Party; and that each of the persons named had been a member or participated in meetings and affairs of the N.A.A.C.P. (R. 57). Then he read a list of 33 persons and stated that some were members of the Communist Party and that each in the recent past had been active in Communist-front organizations in Dade County (R. 57-58). Strickland then gave the names of five persons whom he identified as "present or past residents" of Dade County and as "present and/or past" members of the Communist Party (R. 59).

He was then asked to read the legend on the cards of members of the Communist Party describing their rights and duties (R. 60). As read, paragraphs 3 and 4 pledge each member to fight all forms of "discrimination and segregation and all ideological influences and practices of 'racial' theories . . ." and "to fight for the full social, political and economical equality of the Negro people, and for Negro and white unity" (R. 60-61).

<sup>2</sup> These deposit slips were never produced either at the committee hearings on November 4, 5, 1959, and July 27, 1960, or at the court hearings on May 30, 1960 and August 30, 1960.

Petitioner's testimony followed. He stated that he was custodian of the membership list of the Miami Branch of the N.A.A.C.P., but had not brought these records with him (R. 63); that there were approximately 1,000 members in the Miami Branch (R. 67). He informed the committee that the membership records in his possession were kept for and covered the current year only (R. 63), that membership in the organization was for a 12-month period from the date of joining (R. 67); and that at the end of the 12-month period, a person was no longer a member of the N.A.A.C.P., and his card was removed, unless his membership was renewed (R. 65). He testified that he had been President of the Miami Branch and active in the N.A.A.C.P. for the past five years (R. 81).

Petitioner advised the committee that the N.A.A.C.P., beginning with its annual convention in 1950, and each year thereafter, had adopted anti-Communist resolutions excluding from the organization all members of Communist or other subversive organizations. Copies of these resolutions were left with the committee (R. 69). Father Gibson volunteered to cooperate with the committee by agreeing to answer any questions out of his own personal knowledge concerning membership in the N.A.A.C.P. of any person identified by the committee as subversive, but flatly refused to bring or produce the N.A.A.C.P. membership list at the committee hearings for the purpose of answering any such inquiries (R. 88). Petitioner based this refusal on the grounds that to produce the N.A.A.C.P. membership list at the committee hearings and to testify from these records would create the same fears, concerns and deterrents to the exercise of the right of freedom of association by members and prospective members of the N.A.A.C.P., which would result from the membership list being physically turned over to the committee (R. 74).

He was asked about 14 people previously identified as members of the Communist Party by Strickland (see *ante* p. 9-10). He was given the names and shown photo-

graphs of these individuals. In each instance petitioner stated that he was unable to identify the person named as associated with the N.A.A.C.P. (R. 79-87). Then he was asked whether he would bring the N.A.A.C.P. membership list to authenticate his testimony concerning membership in the N.A.A.C.P. of the 33 persons described by Strickland as either members of the Communist Party or active in Communist-front organizations. This petitioner refused to do (R. 88). He reiterated his offer to say, if asked, whether he knew these persons to be members of the N.A.A.C.P., but refused to bring the N.A.A.C.P. membership list to the committee hearing for the purpose of such testimony. Shortly thereafter the hearings adjourned for the day.

When the hearings resumed the next day, November 5, the first witness called was Arlington Sands. He stated that he was a member of the N.A.A.C.P., but did not know whether his membership had expired (R. 129). He had been active prior to 1949, had been off and on a member for the past ten years (R. 130); had not been to an N.A.A.C.P. meeting in two years (R. 130). He was then asked about the 14 identified as members of the Communist Party by Strickland. He recognized Shantzek (R. 132) and Leah Benomovsky (R. 133), but did not recall seeing them at an N.A.A.C.P. meeting. He did not remember Myron Marks as a member of the N.A.A.C.P. (R. 134), and had never seen Marks' father at an N.A.A.C.P. meeting (R. 135). He stated that he did not believe that Charles Smolikoff had been an N.A.A.C.P. member because the latter had not thought very highly of the N.A.A.C.P. (R. 136). Sands asserted that Leo Sheiner had represented the N.A.A.C.P. during the period when he had been an official of the organization, but he did not believe that Sheiner was a Communist (R. 139-140). He saw Abe Sorkin at N.A.A.C.P. meetings, but did not know whether he was a member (R. 141). He saw James Nimmo at N.A.A.C.P. meetings (R. 141), but never saw Ed Waller at any (R. 142). He denied having ever told Strickland on the prior Wednesday

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that he had seen Augusta Birnberg (R. 143), Ed Waller (R. 144), Charles Smolikoff (R. 145), Leah Benomovsky, Myron Marks (R. 145), or Mike Shantzek (R. 146) at N.A.A.C.P. meetings. He did see Leo Sheiner there because he came to an N.A.A.C.P. meeting at Sands' invitation (R. 144). Strickland was recalled and testified that he had talked to Sands in Miami and that the latter had identified the 14 people in question with the Communist Party and the N.A.A.C.P. (R. 147-151).

Vernell Albury (R. 152-168), Ruth Perry (R. 180-192), G. E. Graves (196-198), officers of the Miami Branch, were shown photographs of the 14 alleged Communists. They uniformly denied knowing these people as members of the N.A.A.C.P., although in rare instances one or two of them had been seen at N.A.A.C.P. meetings.

Father Gibson was then recalled. He explained that a thorough investigation is made of all prospective Branch officers to make certain that no person connected with any subversive group becomes an officer of the N.A.A.C.P. He pointed out that no such investigation of each individual member is possible, but that if it comes to the attention of Branch officials that an individual member is engaged in subversive activities, then action is commenced to terminate his membership in the N.A.A.C.P. (R. 203); and that in the past five years there had been no expulsions from the Branch because of subversive activities (R. 204).

### **The Court Proceedings**

On the basis of petitioner's refusal to produce the N.A.A.C.P. membership list at the committee hearings, proceedings were instituted in the Circuit Court of Leon County to require him to do so (R. 1). In his response to the order to show cause, petitioner invoked the protection afforded the exercise of rights of freedom of association under the Fourteenth Amendment to the Constitution of the United States as a justification for his refusal to comply with the state's request.



On May 30, 1960, at the pre-trial conference prior to hearing on the order to show cause, counsel for the committee asserted that there had been no claim that there had been any degree or amount of Communist infiltration in the N.A.A.C.P. "We say that we want to see, that we have reason to believe that there has been some and we want to investigate to determine the extent, if any, of such infiltration" (R. 257).

At the hearing an attempt was made to adduce testimony showing the committee had no evidence of Communist infiltration in the N.A.A.C.P. (R. 261); that the committee had no knowledge as to whether the 14 persons identified as Communists were members of the N.A.A.C.P. or the Communist Party (R. 262); that most of the persons had not been residents of Florida for the past five years (R. 262); that Strickland had no personal knowledge as to whether any of the persons identified were members of the Communist Party (R. 460); and that except for Nimmo, Waller and Popps, whom he indicated had left the Party, he had spoken to none of the persons about whom he had testified. The court ruled this evidence out of order, and proffers to that effect were read into the record.

Petitioner presented evidence to show the anti-Communist policy of the N.A.A.C.P. (R. 267); that the organization's officers charged with implementing the anti-Communist resolutions had no knowledge or evidence of any Communist infiltration in the Miami Branch during the past five years (R. 267, 319); that there had been a loss in membership in the N.A.A.C.P. because of fear of reprisals against persons identified as being members of the organization (R. 301-302); and incidents of persons publicly identified as being affiliated with the N.A.A.C.P. being subjected to threats and other pressures were cited (R. 271, 285, 300-301, 307, 311, 320-321, 324, 345, 359-361, 367-370).

On July 19, 1960, the trial court held that there were no constitutional barriers to prevent petitioner from being required to produce the N.A.A.C.P. membership list at

committee hearings for the purpose of verifying his testimony in respect to persons about whom he might be questioned. Father Gibson was ordered to appear before the committee on July 27, 1960 with the N.A.A.C.P. membership list for the purpose of answering committee inquiries (R. 417-420).

On July 27, 1960, petitioner appeared before the committee as ordered. He again indicated a willingness to testify from his own knowledge respecting the N.A.A.C.P. affiliation of any persons alleged to be subversive, but refused to produce the membership list (R. 429-433).

On August 30, 1960, petitioner was adjudged in contempt and sentenced to six months' imprisonment and \$1,200 fine or in forfeiture thereof an additional six months' imprisonment as punishment therefor (R. 465).

On December 19, 1960, the Supreme Court of Florida affirmed the judgment and conviction of the trial court (R. 469-478). Application was made for rehearing and, in lieu thereof, a stay to enable petitioner to apply for writ of certiorari to this Court (R. 480). On January 17, 1961, application for rehearing was denied, but execution and enforcement of the judgment was stayed for 60 days. The judgment was ordered further stayed until the matter had been disposed of by this Court or until further orders by the Supreme Court of Florida, if application for review was made to this Court within the 60 day stay granted (R. 481).

### **Reasons for Allowance of the Writ**

1. The decision below is in apparent conflict with *N.A.A.C.P. v. Alabama*, 357 U. S. 449 and *Bates v. Little Rock*, 361 U. S. 516. While the exact situation which was before the Court in those cases is not present here, their underlying rationale necessarily, petitioner submits, controls disposition of the instant controversy.

There, this Court interpreted the Fourteenth Amendment as giving effective and realistic protection to the individual in the exercise of his right of freedom of association.

The correlation between freedom of association and privacy therein was demonstrated, and the need for group association to give practicable effect to the associational right which the Constitution secures was stressed. "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs". (See *N.A.A.C.P. v. Alabama* at p. 462.)

In both cases the Court found that the disclosure of the names of members of the N.A.A.C.P. would constitute a deterrent upon the exercise of rights of freedom of association of the rank and file members of the N.A.A.C.P. It found no valid state interest which would warrant the attempted encroachment on this area of personal liberty.

While the specific point decided in *N.A.A.C.P. v. Alabama* and *Bates v. Little Rock* was that the compelled disclosure of the names and addresses of the members of the Association was not allowable, the basis for that conclusion was that enforced identification of those connected with the N.A.A.C.P. would act to curb members and prospective members of the organization from exercising rights of freedom of association, and from engaging in group advocacy to further legitimate ends.

It is, therefore, the deterrent to the exercise of freedom of association and advocacy in furtherance of lawful objectives with which those cases were concerned. That the production of the N.A.A.C.P. membership list at the committee hearings will accomplish such a forbidden result is hardly open to doubt.

The court below justifies production of the membership list in question on the grounds that petitioner is not compelled to disclose indiscriminately all the names of his members, but merely to have available "records from which to testify regarding the associational status of certain specifically named individuals who have otherwise been identified in this record as having subversive connections." (See *infra*, at page 27.) To seek to distinguish the case at bar, however, on the grounds that here no physical sur-

render to state authorities of the entire membership list is required, petitioner respectfully submits, is to miss the whole thrust and import of this Court's holdings. The question which must be answered is whether what the state seeks to do places an unwarranted limitation upon the exercise of rights of freedom of speech and association. Cf. *American Communications Assn. v. Douds*, 339 U. S. 382; *United States v. Rumely*, 345 U. S. 41; *Sweezy v. New Hampshire*, 354 U. S. 234; *Shelton v. Tucker*, 364 U. S. 479.

The issue here is not whether petitioner is compelled to disclose the entire membership list of the N.A.A.C.P. or only the names of some members. The issue is whether petitioner can be compelled to produce his organization's membership list to testify concerning any person's associational status. Petitioner sought to assist the committee by agreeing to freely testify respecting the N.A.A.C.P. membership of any of these persons named as subversive. While there is doubt that this testimony could have been compelled on this record, petitioner waived his rights in this regard in an attempt to cooperate with the committee. In these circumstances, however, the inquiries are concerned chiefly with those accused of subversion. When, on the other hand, petitioner is required to produce the N.A.A.C.P. membership list for the purpose of verifying his answers about alleged subversives, the inference is that there is some connection between membership in the N.A.A.C.P. and subversive activities. Under those conditions the fundamental impact of the inquiries is to question the legitimacy of the organization. On this record, petitioner respectfully submits, no foundation has been laid to empower the state to take that step. Nothing said in *Barenblatt v. United States*, 360 U. S. 109; *Upshaw v. Wyman*, 360 U. S. 72; or more recently in *Wilkinson v. United States*, — U. S. —, 29 L. W. 4201; or *Braden v. United States*, — U. S. —, 29 L. W. 4210, supports a contrary conclusion.

2. Even considering *Barenblatt*, *Uphaus*, *Wilkinson* and *Braden* as standing for the broad proposition that the nature of Communist activity establishes the state's subordinating interest, the semblance of a valid legislative purpose does not suffice to justify state intrusion upon the protected area in which rights of freedom of association may be exercised. See *Watkins v. United States*, 354 U. S. 178, 198. Here, unlike the situation in *Barenblatt*, *Wilkinson* and *Braden*, petitioner himself was not accused of being a subversive, or of engaging in subversive activities or of having any connection with a subversive organization. Nor does *Uphaus* aid the state's cause, because it cannot be said that a nexus between the Miami Branch of the N.A.A.C.P. and subversive activities has been sufficiently established to support the demand for production of the organization's membership list.

Assuming *arguendo* that the committee was in truth seeking to determine the nature and extent of subversive penetration and infiltration of organizations operating in the field of race relations, it cannot use that premise as the basis for disregarding and levelling all constitutional safeguards to individual liberty erected to protect lawful activity. Cf. *Sweezy v. New Hampshire*, *supra*. Before the state can harass petitioner and force the production of the N.A.A.C.P. membership list, some reasonable basis must be established that either he or his organization is suspect.

The record discloses that each year, beginning in 1950, at its national convention, the N.A.A.C.P. had adopted resolutions barring Communists from membership in the organization (R. 69). Father Gibson explained the manner in which that policy was implemented (R. 203); and it was established that those persons charged with enforcement of the anti-Communist policy of the organization had found no evidence of any Communist infiltration in the Miami Branch in the last five years (R. 204, 267, 319). This testimony was not controverted.

It is true that an investigator named 14 persons alleged to be members of the Communist Party and of the N.A.A.C.P. in Miami; and 33 persons, who were charged with being either members of the Communist Party or active in Communist-front activities in Miami in the recent past, were believed to be members of the N.A.A.C.P. (R. 49-61). It is evident from the record, however, that neither the committee nor the investigator had any personal knowledge of any of these persons being either members of the Communist Party or of the N.A.A.C.P. (R. 142-151, 262, 460). Indeed, the one witness, Arlington Sands, upon whom the committee relied to give evidence on this matter from personal knowledge, disputed the investigator's testimony (R. 132-141).

Moreover, it was established that membership in the organization is on a year-to-year basis; that Arlington Sands did not know whether he was presently a member; that his N.A.A.C.P. activities predated 1950, and that he had not been to an N.A.A.C.P. meeting in over two years (R. 129-130). Thus, the conclusion is inescapable that whatever credible testimony there may be in this record in respect to an associational relationship with the N.A.A.C.P. of any of the persons charged with being members of the Communist Party, such relationship predated 1950. Further, petitioner submits that there is no evidence that any of the persons named are presently residents of Florida. If these persons are present in the state, they could have been called.

Counsel for the committee carefully refused to make a claim as to the extent or degree of Communist infiltration in the N.A.A.C.P. (R. 257). The evidence, upon which the court below relies to support a limitation on the unfettered exercise of personal freedoms at issue here, is the testimony of the committee's paid investigator. The mere unsupported statement of a paid investigator, that certain persons are subversive and have been or are members of an other-



wise legitimate organization, cannot afford a reasonable basis for interference with that organization or its members' right of freedom of association. Cf. *Uphaus v. Wyman, supra*; *Sweezy v. New Hampshire, supra*. Indeed, when the investigator's testimony is disputed by his informant, who alone possess personal knowledge, reliance upon the investigator's testimony to establish an overbalancing state interest means that a subordinating state interest sufficient to warrant interference with rights of freedom of association can be erected by the mere statement of governmental officials that such an interest is present. Needless to say, that rationale would condemn freedom of association and other cognate liberties, regarded as the indispensable prerequisite to the preservation of an open society, to early destruction.<sup>3</sup> Cf. *Braden v. United States, supra*.

Petitioner and the organization to which he belongs are pledged to fight racial discrimination and to seek to secure equal citizenship status for Negroes, as, according to the investigator for the committee, are the members of the Communist Party. Yet only a crass paternalism and a blind unawareness of the currents in present-day human relationships would mislead one to a conclusion that a taint of subversion is necessary for people and organizations to concern themselves with the need for eliminating racial inequality and injustice in the United States.

4. The record here clearly establishes that what is involved is investigation and harassment with the hope of discrediting and smearing the N.A.A.C.P. as being Communist directed. While the present committee had been preceded by two others, remedial legislation has yet to be enacted. Thus, to paraphrase Mr. Justice Brennan, it is

<sup>3</sup> At worst this Court is required to make its own independent evaluation of the evidentiary facts upon which the judgment below rests. See *Blackburn v. Alabama*, 361 U. S. 199; *Spano v. New York*, 360 U. S. 315.

difficult to conceive of how this indefinitely extended and cumulative investigation, even conceding that it may some day come to a point, can be of aid to valid legislation (see *Uphaus v. Wyman*, *supra*, at 102), or for that matter how any prospective legislation in this field can affect petitioner's organization. On the basis of this record, the conclusion is inevitable that the committee called petitioner and other N.A.A.C.P. officials to testify, not because there was a legitimate concern about subversive infiltration in the N.A.A.C.P., but in an attempt to demonstrate that N.A.A.C.P. efforts to eliminate racial discrimination in Florida was the produce of subversion. Obviously, if the organization could be so labelled, membership in it would become suspect and the deterrent effect upon freedom of association, stressed in *N.A.A.C.P. v. Alabama*, and *Bates v. Little Rock*, would be accomplished without the need for the entire N.A.A.C.P. membership list. Petitioner submits that such state interference is constitutionally impermissible.

There can be no doubt that the state may not subject petitioner to the requirement of producing the membership list of the N.A.A.C.P., merely because respondent disagrees or dislikes the organization's aims and activities. See *N.A.A.C.P. v. Alabama*; *Bates v. Little Rock*. No other basis for the attempted intrusion upon the associational relationship of the members of petitioner's organization has been demonstrated. For this reason, petitioner, submits, the judgment of contempt cannot stand.<sup>4</sup> See *N.A.A.C.P. v. Alabama*, *supra*; *Bates v. Little Rock*, *supra*; *Sweezy v. New Hampshire*, *supra*. Cf. *Uphaus v. Wyman*, *supra*.

<sup>4</sup> Petitioner took the position below that Chapter 57-207, Laws of Florida, 1959, was unconstitutionally vague and ineffectual. See *Watkins v. United States*, *supra*. In view of this Court's holding in the *Wilkinson* and *Braden* cases, however, that contention seems to have lost most of its potency. While not abandoning the objection, petitioner has decided to concentrate on what appears to be the more obvious fallacies which underpin the judgment below.

## CONCLUSION

For the reasons hereinabove stated, this petition for writ of certiorari should be granted.

Respectfully submitted,

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Dated: March 17, 1961

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## APPENDIX A

## Opinion of Supreme Court of Florida

THORNAL, J.:

By direct appeal, we are requested to review an order of the circuit court upholding the validity of Chapter 59-207, Laws of Florida, 1959, and adjudging petitioner Gibson guilty of contempt of Court for failure to comply with a subpoena duces tecum issued by appellee Committee.

We must pass upon the constitutionality of Chapter 59-207, Laws of Florida, 1959. We must also determine whether the compelled response to the subpoena duces tecum would be violative of various constitutional rights asserted by appellant.

Appellant Gibson is admittedly the president of the Miami branch of the National Association for the Advancement of Colored People. He had been such for at least five years prior to the critical hearing on November 5, 1959. At the time of the Committee hearing, appellant also admitted that he held in his custody the then current list containing the names of the members of Miami branch of the N.A.A.C.P. He had been served with a subpoena duces tecum directing him to have the list available at the hearing of the Committee on November 5, 1959. The record reveals that prior to the time appellant Gibson was called to testify, an investigator of appellee Committee identified by name some fifty-one persons whom he stated were known members of the Communist Party, or its affiliates. All of these had in times recently past resided or engaged in various activities in Dade County, Florida. The investigator identified fourteen of these people by name and Communist Party membership card number. He testified that these fourteen had been known to have participated in the affairs of Miami branch of the N.A.A.C.P. When appellant Gibson was called to testify the attorney for the appellee Committee identified an allegedly known Communist by name and requested Gibson to refer to the membership list

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and advise whether such allegedly known Communist was listed as a member of Miami branch of N.A.A.C.P. Gibson refused. He stated that he would not bring the list to the Committee hearing as required by the subpoena. For various reasons which we shall mention, he refused to comply with the prior decision of this Court in the same matter by having the list available for reference by him only, even though he had been assured that he would not be required to file the entire list in evidence where it would be subject to public inspection. Following the procedure delineated by the Statute, the appellee Committee requested the circuit judge to issue a rule nisi and grant to appellant an opportunity to answer the questions or else show cause why he should not be charged in contempt. The judge directed the witness to have the membership list available and answer the questions propounded. Again appellant declined. Thereupon, he was adjudged to be in direct contempt of Court and was sentenced to a term of six months in the Leon County jail and to pay a fine of \$1,200. We are now requested to reverse this order.

It is the contention of the appellant Gibson that Chapter 59-207, Laws of Florida, 1959, is unconstitutional. He further contends that the order which compels him to have available the membership list of N.A.A.C.P. for reference by him only as an authentic basis for his testimony before the appellee Committee does violence to his rights of freedom of speech and assembly. Similar constitutional rights of all members of N.A.A.C.P. are allegedly violated.

The appellee Committee contends that the subject statute is constitutional. It asserts that the compelled disclosure of the associational relations of specifically identified alleged subversives does no violence to the constitutionally protected rights of appellant Gibson or other legitimate good faith members of N.A.A.C.P.

We consider it totally unnecessary to burden this opinion with any elaborate dissertation on the constitutionality

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of Chapter 59-207, Laws of Florida, 1959. For all practical purposes, this statute is identical with Chapter 57-125, Laws of Florida, 1957, which we upheld against the same identical assault by this same appellant in *Gibson v. Florida Legislative Investigation Committee*, Fla. 108 So. 2d 729, cer. den., 360 U. S. 919. The 1959 statute is merely a legislative renewal and continuation of the authority of the appellee Committee which had its origin in the 1957 statute which we discussed in considerable detail in the case last cited. The points there made as the basis for the assault on the constitutionality of the statute are repeated in the instant appeal. The appellant certainly has a right to raise doubts as to the validity of an act of the Legislature. However, we do not deem it necessary to repeat in detail the reasons which we have heretofore given for upholding an identical act. We will here do no more than to hold Chapter 59-207, *supra*, constitutional on the authority of *Gibson v. Florida Legislative Investigation Committee*, *supra*.

In our opinion in the case last cited the constitutional rights of the rank and file bona fide members of Miami Branch of N.A.A.C.P. were frankly recognized and given judicial protection against illegal encroachment. Appellant, however, again asserts in behalf of himself and for the benefit of all other members of N.A.A.C.P. a constitutional freedom of speech and assembly which includes associational privacy. He relies on the First Amendment to the Constitution of the United States. Because of the due process provisions of the Fourteenth Amendment to the Constitution of the United States, appellant insists that the states are bound to recognize these so-called First Amendment rights.

While renewing his reliance on *N.A.A.C.P. v. Alabama*, 357 U. S. 449, 78 S. Ct. 1163, appellant urges additional support from *Bates v. City of Little Rock*, 361 U. S. 516, 80 S. Ct. 412. If the factual situation were analogous to the last cited cases we would, of course, deem ourselves bound by those decisions and rule accordingly. However, the instant factual situation is markedly different.



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In *N.A.A.C.P. v. Alabama*, *supra*, the State attempted to require the Association to file its entire membership list with the Secretary of State, allegedly in order to determine the nature of the business of the non-profit corporation. Similarly, in *Bates v. City of Little Rock*, *supra*, the municipality by ordinance attempted to require the Association to file its entire membership list with city officials in order to enable them to determine the applicability of certain license tax requirements. In both instances the State agency attempted to require the publication of the entire membership of the Association. In both instances community antipathy to N.A.A.C.P. was held to be an established fact. In both instances there was a showing deemed to be adequate to the effect that the revelation of the list of members would completely stultify the functioning of the Association because of fear of economic and social retribution and actual threats and fears of threats of physical violence. In other words, it was held to have been shown in those cases that if the names of the good faith members of N.A.A.C.P. were publicly revealed, this fact alone would have such a deterrent effect on their continued membership or the acquisition of new members that the organization would completely disintegrate. In this manner the memberships' freedom of speech and right of assembly would be totally destroyed.

If we were here dealing with a compulsory indiscriminate disclosure of the entire membership list of N.A.A.C.P. we would be confronted with the very serious problem of balancing appellant's rights of free speech and association against potential encroachments by threatened governmental action. However, the instant situation does not make it necessary to evaluate the claimed deterrent effect of revealing the membership list against a showing of subordinating public interest. We recognize the rule that when the so-called deterrent influence by contemplated governmental action is established, the burden moves to

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the government to prove clearly and unequivocally an impelling public need that justifies subordinating the constitutionally assured private right to the exercise of governmental power. *N.A.A.C.P. v. Alabama*, supra; *Bates v. City of Little Rock*, supra. The mere fact that a particular governmental power is admitted to exist, does not in every instance justify its exertion. Even when not absolute in themselves, constitutionally provided individual rights will be subordinated to the exercise of a particular power of government only in those instances when it is made clear and beyond question that governmental action is essential to the public interest.

In the case now here all that has been required is that appellant have available records from which to testify regarding the associational status of certain specifically named individuals who have otherwise been identified in this record as having subversive connections. *Uphaus v. Wyman*, 360 U. S. 72.

As was the case in *Uphaus* the testimony in this record unequivocally reports that numbers of Communist Party members or affiliates have on various occasions attended meetings or participated in the affairs of Miami branch of N.A.A.C.P. This in itself suggests adequate justification for the inquiry upheld by the circuit judge. The announced purpose of the inquiry is to determine whether persons with Communist connections or affiliations are infiltrating the legitimate organizations of the State. Under the rule which we announced in *Gibson v. Florida Legislative Investigation Committee*, supra, and followed by the circuit judge here, there is no danger of encroachment upon the constitutionally guarded rights of appellant or other legitimate, bona fide members of N.A.A.C.P. The rule which we follow does not disturb the delicate equilibrium between the associational rights of rank and file members of N.A.A.C.P. on the one hand and the power of the State to ascertain the whereabouts of those who pose serious threats to its security on the other.

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Appellant simply urges us to construct a constitutional city of refuge which opens its precincts to those who seek to speak freely and assemble righteously in the advocacy of their just causes. In so doing, however, he would have us provide ideological asylum for those who would destroy by violence the very foundations upon which their governmental sanctuary stands. An appeal so illogical, we think, cannot merit judicial sanction.

We conclude, as we have done before, that the appellant as the official custodian of the subject records can be required to refer to them in order to authenticate his testimony. We do not construe the order of the circuit judge as directing that the records be publicly exposed or delivered to the committee or to any one else or to be filed in this cause. As so construed we can find no constitutional objection to the subject order. On the contrary, it comports with our mandate in *Gibson v. Florida Legislative Investigation Committee*, *supra*. This is not an order directing the revelation of the rank and file members of Miami branch of N.A.A.C.P. Under the subject order, those who are legitimate and good faith members of the Association are adequately protected against the alleged retribution which it is claimed would follow upon the unjustifiable publication of the entire list of members.

On the other hand, the particular individuals whose otherwise subversive connections have been revealed are not entitled to the same associational privacy. Stated otherwise, when an individual is identified as one who advocates the violent destruction of the system from which he seeks protection, then the public interest in obtaining light on his other associational activities is sufficient to subordinate his claimed rights of free speech and assembly to the interest of the general good. *Barenblatt v. United States*, 360 U. S. 109.

There is no error in the order under attack. It is, therefore, affirmed.

**APPENDIX B****Opinion of Supreme Court of Florida in *Graham v. Florida Legislative Investigation Committee***

THORNAL, J.:

Appellant Graham seeks reversal of an order of the circuit court upholding the validity of Chapter 59-207, Laws of Florida, 1959, and adjudging him guilty of contempt of court for refusing to answer certain questions propounded to him by the appellee Committee.

We are requested to pass upon the constitutionality of Chapter 59-207, Laws of Florida, 1959. We must also determine whether various constitutional rights of appellant were violated by the order of the circuit court directing him to answer certain questions propounded by the appellee Committee.

Appellant Graham has appealed to us on two other occasions in connection with matters relating to the inquiry being pursued by the appellee. In re: Petition of Edward T. Graham, etc., Fla. 1958, 104 So. 2d 16; Gibson et al. v. Florida Legislative Investigation Committee, Fla. 1959, 108 So. 2d 729.

At a hearing conducted by appellee Committee on November 4, 1959, the attorney for the Committee propounded to the appellant the following question:

"Are you presently a member of the N.A.A.C.P.?" Other questions involving his possible N.A.A.C.P. membership were also asked. The one we quote is typical. The witness inquired as to the pertinency of the question. He was informed that the Committee desired to ascertain whether he was a member of the N.A.A.C.P. in order to follow with questions regarding possible N.A.A.C.P. membership by certain other individuals who had previously been identified as members of the Communist Party. Graham declined to answer the question on the ground that compulsory response would violate his First Amendment

*Appendix B—Opinion of Supreme Court of Florida*

rights of free speech and assembly. He stated that if he should reveal membership in N.A.A.C.P. he would be exposed to social, economic, and perhaps physical abuses because of a community antagonism toward the organization and its program. The witness stated that the revelation of the names of the members of N.A.A.C.P. would result in disastrous reprisals against them in the form of threats of physical violence, loss of jobs, and harassment and annoyance in many forms. He asserted that the disclosure of membership in N.A.A.C.P. would cause the withdrawal from the organization by current members and the refusal of others to become members. This would result in substantially handicapping the organization in the accomplishment of its program. Ultimately N.A.A.C.P. would become completely non-existent in Florida. There was considerable testimony regarding the deterrent effect of compelled disclosure of membership in the N.A.A.C.P. The testimony that was offered and other testimony that was proffered tended to corroborate the statements of the appellant Graham regarding community attitude toward the organization and its members. The appellee Committee offered no testimony regarding the public need which would justify obtaining the requested information from this particular witness. When the witness declined to answer the Committee's inquiry he was cited by the circuit judge to show cause why he should not be adjudged in contempt of Court. Thereafter the matter was heard by the circuit judge and testimony was given or proffered to support appellant's concern over the compelled disclosure of association with the N.A.A.C.P. Again the respondent Committee offered no testimony to support the State's claim of a compelling need for this particular testimony from this particular witness. However, the circuit judge concluded that there was no competent reliable evidence showing any substantial risk of deterrent effect on the membership of N.A.A.C.P. that would result from disclosure of affiliation with the

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organization. He further found that "facts and circumstances of the proceeding at bar are such that the interest of the State is so grave, pressing, and compelling," that the constitutional rights of the witness should yield to the asserted power of the State to compel the disclosure of the desired information. The witness continued to decline to answer. He was sentenced to six months in jail and to pay a fine of \$1,200.00 with an additional six months in jail upon failure to pay the fine. It is this judgment of contempt that we are now asked to reverse.

It is unnecessary to discuss at length the matter of the constitutionality of Chapter 59-207, Laws of Florida, 1959. The circuit judge ruled correctly in upholding the validity of the act. We have approved his ruling in this regard in *Gibson v. Florida Legislative Investigation Committee*, opinion filed this day.

The asserted constitutional right of the appellant to decline to answer the question propounded causes much more concern. It should be remembered that the critical question simply was, "Are you a member of N.A.A.C.P.?" This witness was not interrogated as to any affiliation with the Communist Party or its organizational satellites. We are not here concerned with any effort to require the witness to respond to inquiries which would suggest any subversive activity on his part. In fact, the records compiled by the appellee Committee suggest that there is no adverse inference to be drawn from the Committee's interrogation of the witness Graham.

Although the circuit judge appears to have concluded that the record was devoid of believable evidence regarding the deterrent effect of compelled disclosure of N.A.A.C.P. membership, our own examination of the record certainly leads us to conclude that there was considerable testimony with reference to possible reprisals against any known active leader of N.A.A.C.P. Furthermore, the appellee Committee offered no testimony whatever to contradict the



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testimony of appellant's witness on this matter of the deterrent effect of disclosure.

We should bear in mind that the legislative justification for the authorization of this Committee and its investigatory powers is to inform itself on the matter of possible Communist infiltration into organizations which are active in the field of race relations. It is now well established that First Amendment rights will be subordinated to government action whenever it is clearly demonstrated that there is a pressing and compelling public justification for such action. However, it is equally well established that in order to justify subordinating the private right to public action, the announced public necessity must be established clearly and unequivocally. Otherwise, the guarantees of the First Amendment are adequate as a basis on which to resist encroachment by the government.

The necessity for disclosure of membership by this witness was not supported by the record. In fact, we have held in *Gibson v. Florida Legislative Investigation Committee*, filed this day, that the information regarding affiliations of allegedly known Communists could be obtained from the witness Theodore R. Gibson. Admittedly, he is president of the Miami branch of the N.A.A.C.P. and has custody of the membership list. The Supreme Court of the United States has consistently held that the right of legitimate associational privacy is an aspect of the right to assemble and ~~to~~ speak freely in the advocacy of beliefs guaranteed by the First Amendment to the Constitution of the United States. Such guarantees constitute restrictions on State action under the due process clause of the Fourteenth Amendment to the Constitution of the United States. These individual freedoms can not be suppressed or impaired directly or indirectly by governmental action absent a showing that the State labors under a compelling and pressing need sufficient to justify encroachment on the individual freedom.

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The burden is upon the State to prove the compulsion of the public need. It is now too late in the day to question the authoritative effect and broad scope of decisions of the Supreme Court of the United States that sustain the rights of individuals such as this appellant to associational privacy against asserted governmental action. Even if we personally disagree with these decisions, we must recognize our judicial obligation to apply them in appropriate situations as being the pronouncement of a higher authority on the subject. On the showing made by the instant record, the appellant was supported in his refusal to answer the quoted inquiry by the decisions of the Supreme Court of the United States in *Watkins v. United States*, 354 U. S. 178, 1 L. Ed. 2d 1273, 77 S. Ct. 1173; *N.A.A.C.P. v. Alabama*, 357 U. S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163 and *Bates v. City of Little Rock*, 361 U. S. 516, 80 S. Ct. 412.

We have not overlooked the contended applicability of *Barenblatt v. United States*, 360 U. S. 109, 3 L. Ed. 2d 1115, 79 S. Ct. 1081, as a judicial support for the rule of the trial judge. We think, however, that *Barenblatt* does not sustain the contempt order here. On the contrary, it demonstrates the rule which we have heretofore announced. The question which *Barenblatt* refused to answer was, "Are you now a member of the Communist Party?" He grounded his refusal on the First Amendment. He did not seek cover under the absolute protection of the Fifth Amendment against self-incrimination. The Supreme Court of the United States judicially recognized the close connection between the Communist Party and the violent overthrow of the established government. It took note of its consistent refusal to view the Communist Party as an ordinary political organization and recalled that it had upheld legislative enactments that controlled Communist activities. In other words, the Court judicially recognized the compelling public necessity to prevent the spread of Communism and its influence throughout this country. This compulsion was suf-

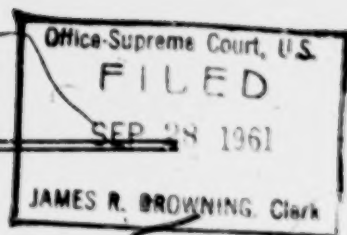
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ficient to subordinate Barenblatt's First Amendment claims to government action. In the instant case, while it is true that the appellee Committee is seeking out the locale of subversives, the immediate point in inquiry so far as appellant is concerned, is his associational relationship with an organization perfectly legitimate but allegedly unpopular in the community. In Barenblatt the claimed right of privacy was asserted to avoid revelation of membership in an organization whose primary objective was the violent overthrow of our government. The government's interest in preventing the accomplishment of the objectives of such an organization justified the encroachment on the asserted right of privacy. In the instant case the objectives of the organization are shown to be legitimate and there is an absence of any showing of a compelling public need that would support encroachment on appellant's constitutionally guaranteed private rights.

The order adjudging the appellant in contempt of Court is reversed.

It is so ordered.

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SUPREME COURT, U. S.



IN THE  
**Supreme Court of the United States**  
October Term, 1961

No. ~~10~~ 6

THEODORE R. GIBSON,  
*Petitioner,*  
v.  
FLORIDA LEGISLATIVE INVESTIGATION  
COMMITTEE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA

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**BRIEF FOR PETITIONER**

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IN THE  
**Supreme Court of the United States**

October Term, 1961

No. 70

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THEODORE R. GIBSON,

*Petitioner,*

v.

FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA

---

**BRIEF FOR PETITIONER**

---

**Opinion Below**

The opinion of the Supreme Court of Florida (R. 262) is reported at 126 So. 2d 129.

**Jurisdiction**

The judgment of the Supreme Court of Florida was entered on December 19, 1960 (R. 262). Application for rehearing was denied on January 17, 1961 (R. 269), but on the same day, in a separate order, execution and enforcement of the judgment was stayed for 60 days to permit petitioner to seek review of this cause here (R. 270). Accordingly, petition for writ of certiorari was filed in this Court on March 20, 1961 and granted on May 8, 1961 (R. 271). Jurisdiction of this Court to review the judgment below rests on Title 28, United States Code, Section 1257(3).

## Question Presented

Whether it is a violation of constitutionally guaranteed rights of freedom of association to require petitioner, as custodian of the N.A.A.C.P. membership list, to bring those records to hearings of the respondent committee to authenticate his answers to inquiries concerning membership in the organization of alleged Communists, where the inevitable consequence is the public discrediting of the legitimacy of the N.A.A.C.P. as an organization and of the loyalty of its members, without justification therefor being established in a showing that petitioner or the N.A.A.C.P. is in some way connected with subversion?

## Statute Involved

CHAPTER 59-207, LAWS OF FLORIDA, 1959

AN ACT to provide for the creation and appointment of a committee of the Legislature to make investigations of the activities in this state of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida; for the conduct of hearings and the subpoenaing of witnesses; providing for circuit courts to enforce committee's processes; for a report of such committee to the 1961 Legislature; authorizing the employment of specialized assistance by the committee; providing for the expenses of the committee; providing an effective date; and providing for the extension of the joint committee set up by Chapter 57-125, Laws of Florida, 1957, until the committee created by this Act is duly appointed and organized.

WHEREAS, the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956, has expired with the filing of its report to the legislature as provided by said act; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, will expire with the filing of its report to the legislature as provided by said act; and

WHEREAS, the said two committees' records and reports disclose a great abuse of the judicial processes of the Courts in Florida, as well as certain activities on the part of various organizations and individuals which constitute violence or the threat thereof, or violations of the laws of this state and which activities are inimical to the well-being of the majority of the citizens of this state; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, was created to complete the work commenced by the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956; and

WHEREAS, there is in the committee's files and records evidence and sources of evidence disclosing that the Communist party, its fronts and apparatus and other subversive organizations, are seeking to agitate and engender ill-will between the races of this and other states; and

WHEREAS, the joint committee set up by chapter 57-125 has diligently pressed its investigations to determine the exact nature, extent and effect of subversive penetration and influence on the actions of certain organizations and individuals active in Florida; and

WHEREAS, said committee has been prevented from ascertaining the same because of the deliberate and almost unanimous action of the witnesses before it in resorting to litigation to frustrate said committee's investigations, which resulted in said committee being mired down in numerous law suits in the Circuit Courts and the Supreme Court of Florida, all of which litigation has ended in the Supreme Court of Florida having twice upheld the authority of said committee to pursue the investigations it has undertaken, and which litigation has now culminated in the United States Supreme Court having issued a stay order

against said committee on an unsworn and unverified application for stay pending application by certain witnesses subpoenaed before the committee for certiorari in the United States Supreme Court; and

WHEREAS, because of lack of time said proceedings still are lodged undisposed of in the United States Supreme Court with the committee powerless to proceed with its investigations because of that Court's stay order; and

WHEREAS, the issues embraced in said litigation involve fundamental principles of State's rights and State's sovereignty as against centralized Federal power and Government by judicial decree and constitute a fight for State sovereignty which this State can ill afford to abandon; and

WHEREAS, there still exists the same grave and pressing need for such a committee to exist in the interim between the 1959 and 1961 sessions of the legislature of Florida, to continue and complete the above two committees' work, and to participate in and contest the efforts represented by the above referred to litigation to whittle away further at this State's rights and sovereignty, and to be every ready to investigate any agitator who may appear in Florida in the interim.

NOW THEREFORE, the following bill is proposed to be enacted by the legislature because of all the foregoing:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. There is hereby created a special committee of the legislature to be composed of seven (7) members, three (3) of whom shall be appointed from the membership of the state senate by the president, and four (4) of whom

shall be appointed from the membership of the state house of representatives by the speaker. The members of said committee shall serve as such until discharged by the president of the senate and the speaker of the house of representatives upon receipt of their report at the regular 1961 session of the legislature.

Section 2. It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state. Such investigations shall be conducted with the purpose of reporting to this legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the state.

Section 3. (1) The committee is authorized to employ such experts, clerical and other assistance as may be required; to require by subpoena or otherwise the attendance of such witnesses and the production of such papers, bonds and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may deem necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any circuit court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond

to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the court shall constitute a direct and criminal contempt of court and the court shall punish said witness accordingly.

Section 4. The committee shall report to the 1961 regular session of the legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. The expenses of this committee, including necessary and regular expenses shall be paid from legislative expense, such total expenses not to exceed sixty-seven thousand five hundred dollars (\$67,500.00), which shall be expended under the direction of the committee.

Section 5. The joint committee set up by chapter 57-125, Laws of Florida, 1957, is hereby extended in all respects so that it may continue to discharge its responsibilities as a party litigant on behalf of the state of Florida in the litigation above referred to until the appointment and organization of the committee provided for in this act shall become effective.

Section 6. This act shall take effect immediately upon becoming a law.

### **Statement**

The instant controversy has a long history. Although the creation of the respondent committee dates from enactment of Chapter 59-207, Laws of Florida, 1959, the investigation in which it is involved and from which this case arises began in 1956. In that year, pursuant to Chapter 34918, Laws of Extraordinary Sessions of Florida, 1956, a committee of the legislature was established to make investigations into the activities of organizations and individuals "advocating violence or a course of conduct which would constitute a violation" of the laws of Florida.



The committee undertook an investigation of the activities of the National Association for the Advancement of Colored People in Florida, on the theory that the organization's consistent efforts to undermine racial discrimination were Communist inspired. A report was filed with the legislature in 1957. Except for the enactment of Chapter 57-125, Laws of Florida, 1957, which created a committee to continue and complete the work of its predecessor, however, no legislation dealing with the infiltration of subversives into legitimate organizations operating in the field of race relations was recommended or adopted at the 1957 session of the Florida legislature.

The 1957 committee, pursuant to its statutory authority, held hearings in Miami and sought to secure physical possession of the membership list of the Miami Branch of the N.A.A.C.P., purportedly in order that the committee could determine the extent of Communist infiltration and influence in the Branch. Disclosure of the names of N.A.A.C.P. members was refused. Counsel for the committee, thereupon, secured a court order requiring that the membership list of the Branch be turned over to the committee. This order was resisted, but before final adjudication at the trial court level, the Supreme Court of Florida granted a stay pending a hearing and determination on the merits.

After hearing, that court upheld Chapter 57-125, Laws of Florida, 1957, as being consistent with constitutional requirements. It concluded that the committee was engaged in a valid legislative purpose in seeking to uncover and determine the extent of Communist infiltration in organizations such as the N.A.A.C.P. On the rationale that the committee's investigation of subversion overbalanced the right to privacy and anonymity in one's associational relationships, the court concluded that *N.A.A.C.P. v. Alabama*, 357 U. S. 449, was inapposite, and that disclosure of membership in the organization could be required, con-

sistent with constitutional guarantees of freedom of speech and association. Therefore, the court decreed that the custodian of the N.A.A.C.P. membership list could be ordered to bring the list to committee hearings for the purpose of verifying answers to inquiries about membership in the organization of persons designated by the committee at subversive (108 So. 2d 729). Application for writ of certiorari was denied by this Court. 360 U. S. 919.

Before this Court acted, the committee, which had been formed pursuant to Chapter 57-125, Laws of Florida, 1957, was due to expire, and in establishing the instant committee, under Chapter 59-207, Laws of Florida, 1959, the life of the old committee was extended "to enable it to discharge its responsibility" in the litigation then pending in this Court until the appointment and organization of the instant committee had become effective.

In 1959, as in 1957, no remedial legislation dealing with the problem of Communist infiltration into organizations operating in the field of race relations resulted from the committee's investigation. The instant committee, however, was created to press and complete the investigation undertaken by the 1956 and 1957 committees to determine the nature and extent to which petitioner's organization had been subjected to subversive penetration and influence.

#### **The November 4-5, 1959, Hearings in Tallahassee, Florida**

On October 30, 1959, petitioner was ordered to appear before the respondent committee on November 4, 1959, in the State Capitol Building at Tallahassee, and to bring the membership records in his possession or of which he was custodian, pertaining to the identity of the members and those making contributions to the local and state N.A.A.C.P. organizations.

At the outset, the Chairman of the respondent committee set forth the scope of the inquiry with which the committee

was concerned. His remarks consisted of a verbatim recital of Chapter 59-207, Laws of Florida, 1959 (R. 8-13), followed by a declaration that the hearing would be concerned with the activities of various organizations operating in Florida in the fields of "race relations . . . coercive reform of social and educational practices and mores by litigation and pressured administrative action . . . labor . . . education . . . and other vital phases of life in this State . . . the Communist Party . . . and Communist-front organizations . . . their aims and objectives . . . and the decree, if any, to which Communists and Communistic influence has [sic] been successful in penetrating, infiltrating, and influencing the various organizations and members thereof which have been, or are now, operating in the above fields" (R. 12-13). The Chairman disassociated the committee from any intent to give the impression that the mere calling a witness to testify signified that the person called was Communist. Each witness was given permission to make a short disclaimer of membership in the Communist Party, if he so desired (R. 13).

Arlington Sands, who, as it developed, was respondent's only witness with personal knowledge of the facts it sought to establish, was not present (R. 6). The first witness bearing on this controversy was R. J. Strickland, employed as an investigator by the committee. He stated that he had conducted investigations concerning the activities of Communists in the South (R. 24); that one Augusta Birnberg was a member of the Communist Party (R. 24); that one Edward Waller had now left the Party, but was once a member, and "stated to me" that he had then been under instructions to infiltrate the N.A.A.C.P., and that he had attended N.A.A.C.P. meetings at an unstated time in Dade County (R. 24); that a James Nimmo, now a resident of New York State, was once a Communist but was no longer associated with the Party (R. 25); that "information indicates" that one Abe Sorkin was a member of the Party and at one

time was a member of the N.A.A.C.P. (R. 25); that one Charles Marks was a member of the Party (R. 25); that "according to information in hand" Myron Marks was a member of the Party (R. 25); that deposit slips showed that Leo Sheiner, a member of the Communist Party, was a contributor to the N.A.A.C.P. (R. 26);<sup>1</sup> that Charles Smolikoff, a former Dade County resident, was a Communist (R. 26); that Tess Kantor, a one-time resident of Miami, was a Communist (R. 26); that Leah Adler Benomovsky, a former resident of Dade County, was a Communist (R. 27); that Louis Popps had once been a member but was no longer believed to be associated with the Party, (R. 27); that Emanuel "Manny" Graff and Bobby Graff, once residents of Miami, were members of the Communist Party (R. 27); that Michael Santzek was a member of the Party (R. 27); and that "it is my information" that each of the persons named had been a member or participated in meetings and affairs of the N.A.A.C.P. Then he read a list of 33 persons and stated that some were members of the Communist Party; and that each in the recent past had been active in Communist-front organizations in Dade County (R. 28). Strickland then gave the names of five persons whom he identified as "present and or past" members of the Communist Party (R. 29).

He was then asked to read the legend on the cards of members of the Communist Party describing their rights and duties (R. 29). As read, paragraphs 3 and 4 pledge each member to fight all forms of "discrimination and segregation, and all ideological influences and practices of 'racial' theories . . ." and to "fight for the full social, political and economical equality of the Negro people, for Negro and white unity" (R. 30).

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<sup>1</sup> These deposit slips were never produced either at the committee hearings on November 4, 5, 1959, and July 27, 1960, or at the court hearings on May 30, 1960, and August 30, 1960.

Petitioner's testimony followed. He stated that he was custodian of the membership records of the Miami Branch of the N.A.A.C.P., but that he had not brought those records with him (R. 31); that there were approximately 1,000 members in the Miami Branch (R. 33). He informed the committee that the membership records in his possession were kept for and covered the current year only (R. 31); that membership in the organization was for a 12-month period from the date of joining (R. 32); that at the end of the 12-month period, a person was no longer a member of the N.A.A.C.P., and unless his membership was renewed, his card was removed from the files (R. 32). He testified that he had been President of the Miami Branch and active in the N.A.A.C.P. for the past five years (R. 40).

Petitioner advised the committee that the N.A.A.C.P., beginning with its annual convention in 1950, and each year thereafter had adopted resolutions condemning Communism and excluding from the organization all Communists and members of other subversive organizations. Copies of these resolutions were left with the committee (R. 35).

Petitioner volunteered to cooperate with the committee, by agreeing to answer any questions out of his own personal knowledge concerning membership in the N.A.A.C.P. of any person identified by the committee as subversive, but flatly refused to bring or produce the N.A.A.C.P. membership records at the committee hearings for the purpose of answering any such inquiries (R. 45). Petitioner based this refusal on the grounds that to produce the N.A.A.C.P. membership records at the committee hearings, and to testify from these records would create the same fears, concerns and deterrents to the exercise of rights of freedom of association by members and prospective members of the N.A.A.C.P., which would result from the membership records being physically turned over to the committee (R. 37).

He was asked about 14 people previously identified as members of the Communist Party by Strickland (R. 24-28). He was given the names and shown photographs of these individuals. In each instance petitioner stated that he was unable to identify the person named as associated with the N.A.A.C.P. (R. 39-44). Then he was asked whether he would bring the N.A.A.C.P. membership records to authenticate his testimony concerning membership in the N.A.A.C.P. of the 33 persons described by Strickland as either members of the Communist Party or active in Communist-front organizations. This petitioner refused to do (R. 45). He reiterated his offer to say, if asked, whether he knew these persons to be members of the N.A.A.C.P., but refused to bring the N.A.A.C.P. membership records to the committee hearing for the purpose of such testimony. Shortly thereafter the hearings adjourned.

When the hearings resumed the next day, November 5, the first witness called was Arlington Sands. He stated that he was a member of the N.A.A.C.P., but did not know whether his membership had expired (R. 64). He had been active in the organization prior to 1949, and had been a member off and on for the past ten years (R. 64). He had not been to an N.A.A.C.P. meeting in two years (R. 65). He was then asked about the 14 identified as members of the Communist Party by Strickland. He recognized Sanitzek (R. 65) and Leah Benomovsky (R. 66), but did not recall seeing them at N.A.A.C.P. meetings. He did not remember Myron Marks as a member of the N.A.A.C.P. (R. 67), and had never seen Marks' father at an N.A.A.C.P. meeting (R. 67). He stated that he did not believe that Charles Smolikoff had been an N.A.A.C.P. member because the latter had not thought very highly of the organization (R. 68). Sands asserted that Leo Sheiner had represented the N.A.A.C.P. as an attorney during the period when he had been an official of the Branch, but he did not believe that Sheiner was a Communist (R. 70). He saw



Abe Sorkin at N.A.A.C.P. meetings, but did not know whether he was a member (R. 70). He saw James Nimmo at N.A.A.C.P. meetings (R. 70), but never saw Ed Waller at any (R. 71). He denied having ever told Strickland on the prior Wednesday that he had seen Augusta Birnberg (R. 72), Ed Waller (R. 72), Charles Smolikoff, Leah Benomovsky, Myron Marks (R. 73), or Mike Santzek (R. 73) at N.A.A.C.P. meetings. He did see Leo Sheiner there because he came to an N.A.A.C.P. meeting at Sands' invitation (R. 72).

Strickland was recalled and testified that he had talked to Sands in Miami and that the latter had identified the 14 people in question as members of the Communist Party and of the N.A.A.C.P. (R. 74-75).

Vernell Albury (R. 76-86), Ruth Perry (R. 86-98), and G. E. Graves (R. 98-103), Treasurer, Secretary and Counsel, respectively, of the Miami Branch, were shown photographs of the 14 alleged Communists. They uniformly denied knowing these people as members of the N.A.A.C.P. although in rare instances one or two of them had been seen at N.A.A.C.P. meetings.

Petitioner was then recalled. He explained that a thorough investigation is made of all prospective Branch officers to make certain that no person connected with any subversive group becomes an officer of the organization. He pointed out that no such investigation of each individual member is possible. If, however, it comes to the attention of Branch officials that an individual member is engaged in subversive activities, action is commenced to terminate his membership in the N.A.A.C.P. (R. 105). There had been no expulsions from the Branch during the past five years because of subversive activities (R. 105).

### **The Court Proceedings**

On the basis of petitioner's refusal to produce the N.A.A.C.P. membership records at the committee hearings,

proceedings were instituted in the Circuit Court of Leon County to require him to do so. In his response to the order to show cause issued by that court, petitioner invoked the protection afforded by the Fourteenth Amendment to the Constitution of the United States to the exercise of rights of freedom of association as a justification for his refusal to comply with the state's request.

At the hearing, an attempt was made to introduce testimony showing that the committee had no evidence of Communist infiltration in the N.A.A.C.P. (R. 126); that the committee had no knowledge as to whether the 14 persons identified as Communists were members of the N.A.A.C.P. or the Communist Party (R. 126); that most of the persons had not been residents of Florida for the past five years (R. 126); that Strickland had no personal knowledge as to whether any of the persons identified were members of the Communist Party (R. 222); and that except for Nimmo, Waller and Popp, whom he indicated had left the Party, he had spoken to none of the persons about whom he had testified. The court ruled this evidence out of order, and proffers to that effect were read into the record.

Petitioner presented evidence to show the anti-Communist policy of the N.A.A.C.P. (R. 130); that the organization's officers charged with implementing the anti-Communist resolutions had no knowledge or evidence of any Communist infiltration in the Miami Branch during the past five years (R. 130); that there had been a loss in membership in the N.A.A.C.P. because of fear of reprisals against persons identified as being members of the organization (R. 159-160, 152-153); and incidents of persons publicly known to be affiliated with the N.A.A.C.P. being subjected to threats and other pressures were cited (R. 133, 134, 136, 152, 165, 168).

On July 19, 1960, the trial court held that there were no constitutional barriers to prevent petitioner from being

required to produce the N.A.A.C.P. membership list at committee hearings for the purpose of verifying his testimony in respect to person about whom he might be questioned. Petitioner was ordered to appear before the committee on July 27, 1960 with the N.A.A.C.P. membership records for the purpose of answering committee inquiries (R. 229).

On July 27, 1960, petitioner appeared before the committee as ordered. He again indicated a willingness to testify from his own personal knowledge respecting the N.A.A.C.P. affiliation of any persons alleged by the committee to be subversive, but refused to produce the membership records to verify his answers (R. 235).

On August 15, 1960 an order to show cause as to why petitioner should not be adjudged in contempt was entered by the Circuit Court (R. 253).—In response to the rule to show cause (R. 254) and at the hearing thereon on August 30, 1960, petitioner rested his case on the Fourteenth Amendment' guarantee of rights of freedom of association.

At the close of the hearing on August 30, 1960, petitioner was adjudged in contempt and sentenced to six months' imprisonment and \$1,200 fine, or in default thereof an additional six months' imprisonment (R. 258).

On December 19, 1960, the Supreme Court of Florida affirmed the judgment and conviction of the trial court (R. 262-267). Application was made for rehearing and, in lieu thereof, a stay to enable petitioner to apply for writ of certiorari to this Court (R. 268, 270). On January 17, 1961, application for rehearing was denied, but execution and enforcement of the judgment was stayed to enable petitioner to bring the cause here (R. 270-271).

## Summary of Argument

It is now settled constitutional doctrine that the Fourteenth Amendment forbids state interference with freedom of speech and association unless the intrusion can be justified by a subordinating state interest of major proportions. See *Shelton v. Tucker*, 364 U. S. 479; *Louisiana v. N.A.A.C.P.*, 366 U. S. 293; *Sweezy v. New Hampshire*, 354 U. S. 234; *N.A.A.C.P. v. Alabama*, 357 U. S. 449; *Bates v. Little Rock*, 361 U. S. 516. A simulated interest does not suffice. See *Sweezy v. New Hampshire*, *supra*.

In the instant case, the issue raised is whether petitioner can be required to bring the membership list of the N.A.A.C.P. to hearings of the respondent committee to authenticate his responses to inquiries concerning membership in the organization of persons allegedly subversive. Petitioner has manifested a willingness to answer such questions out of his personal knowledge. He takes the position, however, that to require a check of the organization's membership list to confirm these replies would cast suspicion on the N.A.A.C.P.'s legitimacy as an organization and would fatally discredit the organization without proof of subversive infiltration, thereby accomplishing as effective a deterrent upon the exercise of rights of freedom of association by members and prospective members as if the entire list had been published. Cf. *Sweezy v. New Hampshire*, *supra*; *N.A.A.C.P. v. Alabama*, *supra*.

Chapter 59-207 of the Laws of Florida, 1959, empowers respondent to "make investigations of the activities . . . of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of the State of Florida." The committee has used this mandate in an attempt to link N.A.A.C.P. activities in Florida with subversion. But without a showing in this record of nexus between the N.A.A.C.P. and petitioner on the one hand, and Communist activities on the other,

there is no foundation upon which interference with freedom of association rights can be based. Therefore, the *ratio decidendi* of *Barenblatt v. United States*, 360 U. S. 109; *Braden v. United States*, 365 U. S. 431; *Wilkinson v. United States*, 365 U. S. 399; and *Uphaus v. Wyman*, 360 U. S. 72, is inapposite.

The power of the legislature to investigate is abused when that authority is used for the sake of exposure and for the purpose of investigation as ends in themselves. See *Watkins v. United States*, 354 U. S. 178. Such, petitioner contends, is the situation here, and for these reasons the conviction below constitutes an infraction of the due process requirements of the Fourteenth Amendment.

## ARGUMENT

### **Petitioner's Conviction is Proscribed by the Due Process Clause of the Fourteenth Amendment As An Unwarranted Violation of Constitutional Guarantees of Freedom of Association.**

The right to determine for oneself which thoughts, sentiments and emotions should be communicated to others dates back to the common law, Warren and Brandeis, "The Right of Privacy," 4 *Harv. L. Rev.* 193, 196 (1890). It is now an unquestionable tenet of constitutional law that the Fourteenth Amendment bars state interference with the exercise of rights of freedom of speech or association, unless such intrusion can be justified by a subordinating societal interest of compelling proportions. See *American Communications Assn. v. Douds*, 339 U. S. 382; *Thomas v. Collins*, 323 U. S. 516; *N.A.A.C.P. v. Alabama*, 357 U. S. 449; *Bates v. Little Rock*, 361 U. S. 516; *Shelton v. Tucker*, 364 U. S. 473; *Louisiana v. N.A.A.C.P.*, 366 U. S. 293; cf. *Uphaus v. Wyman*, 360 U. S. 72; *Barenblatt v. United States*, 360 U. S. 109; *Wilkinson v. United States*, 365 U. S. 399;

*Braden v. United States*, 365 U. S. 431; *Communist Party of the United States v. Subversives Activities Control Board*, 367 U. S. 1.

The *Alabama* case, in weighing the impact of an enforced disclosure of associational ties on the unfettered exercise of the right of freedom of association in respect to an unpopular, albeit lawful, group activity, held at page 462: "Inviolability of privacy in group association may in many circumstances be indispensable to freedom of association, particularly where a group espouses dissident beliefs."

In *Bates*, application of the same rationale resulted in invalidation of an ordinance requiring the publication of the N.A.A.C.P. membership list, even though there the state sought to justify the enforced disclosure as an incident to the valid exercise of its power to raise revenue.

In *Shelton*, when the state sought to require teachers in all educational institutions supported by public funds to reveal all their associational ties, the statute was declared invalid because in its "unlimited and indiscriminate sweep", it resulted in a broad interference with personal freedom not essential to the accomplishment of a valid governmental purpose.

Finally, in the *Louisiana* case, enforcement of legislation, enacted in 1924 to curb the Ku Klux Klan, so as to require the public identification of membership in an organization not shown to be engaged in lawlessness, was invalidated as an unconstitutional interference with fundamental rights. There this Court enunciated at page 297 a principle particularly in point here:

At one extreme is criminal conduct which cannot have shelter in the First Amendment. At the other extreme are regulatory measures, which, no matter how sophisticated, cannot be employed in purpose or in effect to stifle, per. size, or curb the exercise of First Amendment rights.



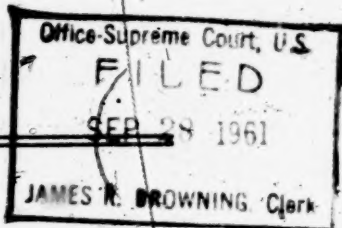
This, as was said in that case, marks "the area in which the present controversy lies."

The record here fully documents the contention that public disclosure of the names of members and contributors of the N.A.A.C.P. in Florida results in reprisals of various proportions. Petitioner testified as to a threat to bomb his home (R. 134), and concerning the firing of an Alvin Berkman from his job because of his connection with the N.A.A.C.P. (R. 136). Ruth Perry, Secretary of the Miami Branch, testified that persons called the library where she worked demanding that she be discharged and that she received numerous harassing phone calls at home, after her membership in the N.A.A.C.P. was made public (R. 165). Reverend Lowry testified that after it had been announced in the public press that he was an officer of the state organization, two shots were fired into his bedroom (R. 168). Under these circumstances, the deterrent effect of public disclosure of membership in the N.A.A.C.P. on the exercise of fundamental personal freedoms would seem to have been conclusively demonstrated, and the Supreme Court of Florida so held. See *Graham v. Florida Legislative Investigation Committee*, 136 So. 2d 133, 135.

In the *Alabama*, *Bates* and *Louisiana* cases, the question at issue was whether the state could require production of the entire membership list. In the instant case, the question is whether petitioner can be compelled to bring that list to committee hearings for the purpose of answering inquiries propounded to him in respect to the organizational connection of persons identified as subversives by respondent.

This is a mere difference in form and has no bearing on the central issue, which is whether a state may limit or stifle the exercise of rights of freedom of speech and association except to protect a countervailing interest of paramount importance. Cf. *United States v. Rumely*, 345 U. S. 41;

**LIBRARY**  
SUPREME COURT, U. S.



IN THE  
**Supreme Court of the United States**  
October Term, 1961

No. ~~10~~ 6

THEODORE R. GIBSON,

*Petitioner,*

v.

FLORIDA LEGISLATIVE INVESTIGATION  
COMMITTEE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA

**BRIEF FOR PETITIONER**

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*Sweezy v. New Hampshire*, 354 U. S. 234. As this Court said in *Shelton*, at page 488: "... even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."

The asserted justification for the interference with the constitutionally protected freedom of the organization's members condoned below is the state's overbalancing interest in ascertaining the scope of the activities of the Communist Party in Florida. While the substantiality of the state's interest in this regard must be conceded, see *Wilkinson v. United States*, *supra*; *Braden v. United States*, *supra*; *Uphaus v. Wyman*, *supra*, its inquiry cannot be merely an excuse for a broad interference with the exercise of personal liberties by members of dissident or unpopular groups. Cf. *Sweezy v. New Hampshire*, *supra*; *Louisiana v. N.A.A.C.P.*, *supra*. Undoubtedly, a mere assertion that a subordinating interest exists or a mere statement that the committee has "knowledge" that subversives are infiltrating the organization does not constitute justification for intrusion in this area. Cf. *Bates v. Little Rock*, *supra*; *Louisiana v. N.A.A.C.P.*, *supra*.

*Barenblatt v. United States*, *supra*; *Wilkinson v. United States*, *supra*; *Braden v. United States*, *supra*; and *Uphaus v. Wyman*, *supra*, are inapposite. In *Barenblatt*, at page 128, the Court, recognizing "... the close nexus between the Communist Party and the violent overthrow of the government," held that questions to the petitioner concerning his own Communist Party membership were valid and constitutionally permissible.

In *Wilkinson* where the issue raised also concerned petitioner's membership in the Communist Party, the Court pointed out that Wilkinson had not been summoned as a result of an indiscriminate dragnet procedure, lacking in probable cause for belief that he possessed information

that might be helpful to the committee, but that the committee had reason to believe that petitioner was then an active Communist leader. The same situation existed in *Braden* when a petitioner had refused to say whether he was a Communist.

In *Uphaus* the Court stated at page 79, that the "nexus between World Fellowship and subversive activities disclosed by the record furnished adequate justification for the investigation we here review." None of these justifying criteria are present in this case.

Moreover, in the above cited cases, where disclosure of the associational tie was upheld, it is clear that the semblance of a valid legislative purpose would not have been sufficient. See *Watkins v. United States*, 354 U. S. 178, 198, 199, where the Court stated:

We cannot simply assume, however, that every congressional investigation is justified by a public need that overbalances any private rights affected. To do so would abdicate the responsibility placed by the Constitution upon the judiciary to insure that Congress does not unjustifiably encroach upon an individual's right to privacy nor abridge his liberty of speech, press, religion or assembly.

Continuing at page 200, the Court added:

We have no doubt that there is no power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.

Where a person is not himself accused of engaging in subversive activities, and where there is no basis for a belief that his group is subversive, this Court has construed the Fourteenth Amendment as proscribing enforced disclosure of the names of members of the organization, when

as a necessary result exercise of personal liberty guaranteed thereunder would be jeopardized. See *Sweezy v. New Hampshire*, *supra*; *Bates v. Little Rock*, *supra*.

In the instant case, as in *Sweezy v. New Hampshire*, *supra*, the petitioner and the organization to which he belongs deny ever engaging in or advocating subversive activities. On the contrary, it is asserted that they have been actively opposed to Communism and its tenets, and that membership in the N.A.A.C.P. is barred to Communists.

Rev. Gibson indicated that membership runs from year to year, and when not renewed at the end of the year, the individual's name is removed from the files. Thus, inquiries concerning a relationship to the organization, involving the necessity for verification against the membership list, must relate to the current year (R. 32).

A specific investigation is made by the Association clearing all prospective officers of any connection with subversion (R. 105). While it is not possible to do this with members-at-large, Rev. Gibson testified that if the Branch has knowledge of a member engaging in subversive activities, that person would be expelled (R. 105), and that there had been no expulsions in the last five years (R. 104). It might be added that the loyalty of the organization has never been questioned by federal agencies concerned with the menace of Communism to the nation as a whole.

Neither the committee, nor its paid investigator, had any personal knowledge that any of the persons described as subversives were members of the Communist Party or of the N.A.A.C.P.

The only witness who could testify from personal knowledge disputed the investigator's assertions (R. 72 and 73). Moreover, he was obviously testifying concerning matters which predated 1950 (R. 65), so that his testimony could not be related to the present, and he had not been to an N.A.A.C.P. meeting in two years. Further, there was abso-

lutely no proof that any of those named as members of the Communist Party are presently residents of Florida. In short, the record here utterly fails to establish any connection between the N.A.A.C.P. and any subversive group or subversive activities in any degree whatsoever.

Petitioner voluntarily agreed to answer from his own knowledge questions concerning membership in the organization of persons identified as subversive. If, however, he must also produce the membership list and check it to authenticate his responses to these inquiries, grave doubts are cast upon the legitimacy of the organization itself. He thereby, links the organization to Communist activities. Thus, without proof, the organization's disloyal orientation becomes to the public an established fact. The organization is damaged and its effectiveness impaired. Doubts and suspicions about it arise, therefore, which would necessarily adversely affect the organization's ability to attract members and contributors.

The N.A.A.C.P. becomes suspect without proof of subversive infiltration and without any need for publication of the entire membership records. Members who thereafter might be identified in another connection would fear not only reprisals as dissidents, but public vilification as disloyal Americans. Prospective members would fear connection with an organization which had been established in the public's mind as subversive. Nothing in the record creates any basis for thus handicapping the organization, which had been described by the Supreme Court of Florida, see *Graham v. Florida Legislative Investigation Committee*, *supra*, at page 136, as "perfectly legitimate but allegedly unpopular in the community." Thus, the rationale which led this Court in the *Alabama*, *Bates* and *Louisiana* cases to hold that a state could not require disclosure of the N.A.A.C.P. membership list applies here, and bars enforcement of an order that petitioner testify from that list, since the deterrent to free exercise of freedom of association would be the same as that condemned in those cases.



Petitioner, and the organization to which he belongs, have views and beliefs respecting the status of Negroes in the society at variance with those of the dominant majority in Florida. These views and beliefs, i.e., that the fundamental law requires that Negroes be accorded equal treatment without distinction because of color, are in keeping with doctrine enunciated by this Court. The fact that petitioner's objectives are distasteful to some does not make them disloyal, or warrant interference with his right and the right of N.A.A.C.P. members in Florida to espouse such dissident beliefs, and to engage in lawful activities to effectuate their views. The record conclusively demonstrates, petitioner submits, that the only real basis for the committee's investigation of the N.A.A.C.P., and its effort to link it with subversion, is the fact that the committee is opposed to the organization's advocacy of desegregation and seeks to use state power to impair the N.A.A.C.P.'s effectiveness. Measured by applicable constitutional standards, the committee's action cannot be sustained. See *N.A.A.C.P. v. Alabama*; *Sweezy v. New Hampshire*, *supra*.

The instant statute creates a committee to "make investigations of the activities of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida . . ." The committee is necessarily limited to carrying out those functions in which the state has an interest—the investigation of subversive organizations advocating violence or a violation of the laws. See *Watkins v. United States*, *supra*, where the Court said, at page 198, referring to *United States v. Rumely*:

The magnitude and complexity of the problem of applying the First Amendment to that case led the Court to construe narrowly the resolution describing the committee's authority. It was concluded that, when the First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter.

The Court continues at p. 206:

Plainly these committees are restricted to the missions delegated to them, i.e., to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere.

In *Sicely v. New Hampshire*, *supra*, the Court stated, at page 245:

It is particularly important that the exercise of the power of the compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas . . .

When an investigatory committee exceeds these limits, it is abusing the legislative process and carrying on an activity which is both unauthorized and violative of constitutionally secured freedoms. Cf. *Kilbourn v. Thompson*, 103 U. S. 168, 192.

Respondent is attempting to use a valid legislative mandate, viz., authority to investigate organizations advocating violence or violation of the laws, to curb N.A.A.C.P. activities by posing a threat of exposure of the organization's members, and of publicly tainting the organization as being Communist dominated. This constitutes an abuse of the legislative process see, *Watkins v. United States*, *supra*, *Kilbourn v. Thompson*, *supra*, which, like abuse of the judicial process, is not permissible, *Dean v. Kochendorfer*, 237 N. Y. 384, 143 N. E. 229 (1924); *L. B. Price Mercantile Co. v. Adams*, 56 Ga. App. 756, 194 S. E. 29 (1937); see also *Tranchina v. Arcinas*, 78 Cal. App. 2d 522, 178 P. 2d 65 (1947); *Defnall v. Schoen*, 73 Ga. App. 25, 35 S. E. 2d 564 (1945); *Peerless Oil and Gas Co. v. Texas*, 138 S. W. 2d 637, *aff'd*, 138 Tex. 301, 158 S. W. 2d 758 (1940).

Here the committee is in disagreement with the Association's use of the courts and other lawful means to promote desegregation. It attempts to use its legislative mandate to coerce the giving up of the right to associational privacy of members of the N.A.A.C.P. The damage which will result, in terms of the deterrent effect upon the exercise of personal liberty by members and prospective members is amply demonstrated by this record.

In those cases in which interference with the exercise of associational rights and privacy therein has been permitted, not only was a connection to subversion shown, see *Wilkinson v. United States, supra*; *Braden v. United States, supra*, but the data gathered was to be used as a basis for legislation.

In *Wilkinson, supra*, the Court points out that the committee resolution authorizing the Atlanta hearing expressly referred to two legislative proposals, an amendment to Section 4 of the Communist Control Act and amendments to the Foreign Agents Registration Act. The Chairman's and the Staff Director's statements contained lengthy discussions of legislation which the committee had under consideration. In the instant case, the only legislation enacted or apparently under consideration was a periodic extension of the committee's life. As Mr. Justice Brennan in dissent pointed out in *Uphaus v. Wyman, supra*, at 102, investigation and exposure are not self contained legislative powers in themselves.

If exposure is the purpose, as it seems to be, revelation of membership, rather than leading to legislation, would merely mean that, in the words of Judge Thornal in *Graham v. Florida Legislative Investigation Committee, supra*, at page 134, "... the N.A.A.C.P. would become completely non-existent in Florida." To permit the legislative process to be used for this purpose and to a discrediting of the organization, without any showing of a nexus between the

Communist Party and the N.A.A.C.P., is constitutionally impermissible, petitioner submits, under the decisions of this Court. See *Sweezy v. New Hampshire*; *Uphaus v. Wyman*; *United States v. Rumely*.

## CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that the judgment below should be reversed.

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IN THE  
**Supreme Court of the United States**

**October Term, 1961**

**No. 70**

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**THEODORE R. GIBSON,**

*Petitioner,*

**v.**

**FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE**

---

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA**

---

**BRIEF FOR PETITIONER**

**Opinion Below**

The opinion of the Supreme Court of Florida (R. 262) is reported at 126 So. 2d 129.

**Jurisdiction**

The judgment of the Supreme Court of Florida was entered on December 19, 1960 (R. 262). Application for rehearing was denied on January 17, 1961 (R. 269), but on the same day, in a separate order, execution and enforcement of the judgment was stayed for 60 days to permit petitioner to seek review of this cause here (R. 270). Accordingly, petition for writ of certiorari was filed in this Court on March 20, 1961 and granted on May 8, 1961 (R. 271). Jurisdiction of this Court to review the judgment below rests on Title 28, United States Code, Section 1257(3).

## Question Presented

Whether it is a violation of constitutionally guaranteed rights of freedom of association to require petitioner, as custodian of the N.A.A.C.P. membership list, to bring those records to hearings of the respondent committee to authenticate his answers to inquiries concerning membership in the organization of alleged Communists, where the inevitable consequence is the public discrediting of the legitimacy of the N.A.A.C.P. as an organization and of the loyalty of its members, without justification therefor being established in a showing that petitioner or the N.A.A.C.P. is in some way connected with subversion?

## Statute Involved

CHAPTER 59-207, LAWS OF FLORIDA, 1959

AN ACT to provide for the creation and appointment of a committee of the Legislature to make investigations of the activities in this state of organizations and individuals advocating violence or a course of conduct which would constitute a violation of the laws of Florida; for the conduct of hearings and the subpoenaing of witnesses; providing for circuit courts to enforce committee's processes; for a report of such committee to the 1961 Legislature; authorizing the employment of specialized assistance by the committee; providing for the expenses of the committee; providing an effective date; and providing for the extension of the joint committee set up by Chapter 57-125, Laws of Florida, 1957, until the committee created by this Act is duly appointed and organized.

WHEREAS, the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956, has expired with the filing of its report to the legislature as provided by said act; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, will expire with the filing of its report to the legislature as provided by said act; and

WHEREAS, the said two committees' records and reports disclose a great abuse of the judicial processes of the Courts in Florida, as well as certain activities on the part of various organizations and individuals which constitute violence or the threat thereof, or violations of the laws of this state and which activities are inimical to the well-being of the majority of the citizens of this state; and

WHEREAS, the joint committee set up by chapter 57-125, Laws of Florida, 1957, was created to complete the work commenced by the joint committee set up by chapter 31498, Laws of the extraordinary session, 1956; and

WHEREAS, there is in the committee's files and records evidence and sources of evidence disclosing that the Communist party, its fronts and apparatus and other subversive organizations, are seeking to agitate and engender ill-will between the races of this and other states; and

WHEREAS, the joint committee set up by chapter 57-125 has diligently pressed its investigations to determine the exact nature, extent and effect of subversive penetration and influence on the actions of certain organizations and individuals active in Florida; and

WHEREAS, said committee has been prevented from ascertaining the same because of the deliberate and almost unanimous action of the witnesses before it in resorting to litigation to frustrate said committee's investigations, which resulted in said committee being mired down in numerous law suits in the Circuit Courts and the Supreme Court of Florida, all of which litigation has ended in the Supreme Court of Florida having twice upheld the authority of said committee to pursue the investigations it has undertaken, and which litigation has now culminated in the United States Supreme Court having issued a stay order

against said committee on an unsworn and unverified application for stay pending application by certain witnesses subpoenaed before the committee for certiorari in the United States Supreme Court; and

WHEREAS, because of lack of time said proceedings still are lodged undisposed of in the United States Supreme Court with the committee powerless to proceed with its investigations because of that Court's stay order; and

WHEREAS, the issues embraced in said litigation involve fundamental principles of State's rights and State's sovereignty as against centralized Federal power and Government by judicial decree and constitute a fight for State sovereignty which this State can ill afford to abandon; and

WHEREAS, there still exists the same grave and pressing need for such a committee to exist in the interim between the 1959 and 1961 sessions of the legislature of Florida, to continue and complete the above two committees' work, and to participate in and contest the efforts represented by the above referred to litigation to whittle away further at this State's rights and sovereignty, and to be every ready to investigate any agitator who may appear in Florida in the interim.

NOW THEREFORE, the following bill is proposed to be enacted by the legislature because of all the foregoing:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. There is hereby created a special committee of the legislature to be composed of seven (7) members, three (3) of whom shall be appointed from the membership of the state senate by the president, and four (4) of whom

shall be appointed from the membership of the state house of representatives by the speaker. The members of said committee shall serve as such until discharged by the president of the senate and the speaker of the house of representatives upon receipt of their report at the regular 1961 session of the legislature.

Section 2. It shall be the duty of the committee to make as complete an investigation as time permits of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, or a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of their personal and business activities by the majority of the citizens of this state. Such investigations shall be conducted with the purpose of reporting to this legislature of the activities of such organizations to the end that corrective legislation may be adopted if found necessary to correct any abuses against the peace and dignity of the state.

Section 3. (1) The committee is authorized to employ such experts, clerical and other assistance as may be required; to require by subpoena or otherwise the attendance of such witnesses and the production of such papers, bonds and documents, and to administer such oaths and to take such testimony and to make such expenditures within the limitation herein authorized as it may deem necessary in the performance of its duties.

(2) Should any witness fail to respond to the lawful subpoena of the committee, or having responded fails to answer all lawful inquiries or turn over evidence to this committee, the committee may file a petition before any circuit court in Florida setting up such failure on the part of said witness. On the filing of such petition the court shall take jurisdiction of the witness and the subject matter of said petition and shall direct the witness to respond

to all lawful questions and to produce all documentary evidence in its possession which is lawfully demanded. The failure of any witness to respond pursuant to the order of the court shall constitute a direct and criminal contempt of court and the court shall punish said witness accordingly.

Section 4. The committee shall report to the 1961 regular session of the legislature the results of its investigations, together with its recommendations, if any, for necessary legislation. The expenses of this committee, including necessary and regular expenses shall be paid from legislative expense, such total expenses not to exceed sixty-seven thousand five hundred dollars (\$67,500.00), which shall be expended under the direction of the committee.

Section 5. The joint committee set up by chapter 57-125, Laws of Florida, 1957, is hereby extended in all respects so that it may continue to discharge its responsibilities as a party litigant on behalf of the state of Florida in the litigation above referred to until the appointment and organization of the committee provided for in this act shall become effective.

Section 6. This act shall take effect immediately upon becoming a law.

### Statement

The instant controversy has a long history. Although the creation of the respondent committee dates from enactment of Chapter 59-207, Laws of Florida, 1959, the investigation in which it is involved and from which this case arises began in 1956. In that year, pursuant to Chapter 34918, Laws of Extraordinary Sessions of Florida, 1956, a committee of the legislature was established to make investigations into the activities of organizations and individuals "advocating violence or a course of conduct which would constitute a violation" of the laws of Florida.



The committee undertook an investigation of the activities of the National Association for the Advancement of Colored People in Florida, on the theory that the organization's consistent efforts to undermine racial discrimination were Communist inspired. A report was filed with the legislature in 1957. Except for the enactment of Chapter 57-125, Laws of Florida, 1957, which created a committee to continue and complete the work of its predecessor, however, no legislation dealing with the infiltration of subversives into legitimate organizations operating in the field of race relations was recommended or adopted at the 1957 session of the Florida legislature.

The 1957 committee, pursuant to its statutory authority, held hearings in Miami and sought to secure physical possession of the membership list of the Miami Branch of the N.A.A.C.P., purportedly in order that the committee could determine the extent of Communist infiltration and influence in the Branch. Disclosure of the names of N.A.A.C.P. members was refused. Counsel for the committee, thereupon, secured a court order requiring that the membership list of the Branch be turned over to the committee. This order was resisted, but before final adjudication at the trial court level, the Supreme Court of Florida granted a stay pending a hearing and determination on the merits.

After hearing, that court upheld Chapter 57-125, Laws of Florida, 1957, as being consistent with constitutional requirements. It concluded that the committee was engaged in a valid legislative purpose in seeking to uncover and determine the extent of Communist infiltration in organizations such as the N.A.A.C.P. On the rationale that the committee's investigation of subversion overbalanced the right to privacy and anonymity in one's associational relationships, the court concluded that *N.A.A.C.P. v. Alabama*, 357 U. S. 449, was inapposite, and that disclosure of membership in the organization could be required, con-

sistent with constitutional guarantees of freedom of speech and association. Therefore, the court decreed that the custodian of the N.A.A.C.P. membership list could be ordered to bring the list to committee hearings for the purpose of verifying answers to inquiries about membership in the organization of persons designated by the committee at subversive (108 So. 2d 729). Application for writ of certiorari was denied by this Court. 360 U. S. 919.

Before this Court acted, the committee, which had been formed pursuant to Chapter 57-125, Laws of Florida, 1957, was due to expire, and in establishing the instant committee, under Chapter 59-207, Laws of Florida, 1959, the life of the old committee was extended "to enable it to discharge its responsibility" in the litigation then pending in this Court until the appointment and organization of the instant committee had become effective.

In 1959, as in 1957, no remedial legislation dealing with the problem of Communist infiltration into organizations operating in the field of race relations resulted from the committee's investigations. The instant committee, however, was created to press and complete the investigation undertaken by the 1956 and 1957 committees to determine the nature and extent to which petitioner's organization had been subjected to subversive penetration and influence.

#### **The November 4-5, 1959, Hearings in Tallahassee, Florida**

On October 30, 1959, petitioner was ordered to appear before the respondent committee on November 4, 1959, in the State Capitol Building at Tallahassee, and to bring the membership records in his possession or of which he was custodian, pertaining to the identity of the members and those making contributions to the local and state N.A.A.C.P. organizations.

At the outset, the Chairman of the respondent committee set forth the scope of the inquiry with which the committee

was concerned. His remarks consisted of a verbatim recital of Chapter 59-207, Laws of Florida, 1959 (R. 8-13), followed by a declaration that the hearing would be concerned with the activities of various organizations operating in Florida in the fields of "race relations . . . coercive reform of social and educational practices and mores by litigation and pressured administrative action . . . labor . . . education . . . and other vital phases of life in this State . . . the Communist Party . . . and Communist-front organizations . . . their aims and objectives . . . and the decree, if any, to which Communists and Communistic influence has [sic] been successful in penetrating, infiltrating, and influencing the various organizations and members thereof which have been, or are now, operating in the above fields" (R. 12-13). The Chairman disassociated the committee from any intent to give the impression that the mere calling a witness to testify signified that the person called was Communist. Each witness was given permission to make a short disclaimer of membership in the Communist Party, if he so desired (R. 13).

Arlington Sands, who, as it developed, was respondent's only witness with personal knowledge of the facts it sought to establish, was not present (R. 6). The first witness bearing on this controversy was R. J. Strickland, employed as an investigator by the committee. He stated that he had conducted investigations concerning the activities of Communists in the South (R. 24); that one Augusta Birnberg was a member of the Communist Party (R. 24); that one Edward Waller had now left the Party, but was once a member, and "stated to me" that he had then been under instructions to infiltrate the N.A.A.C.P., and that he had attended N.A.A.C.P. meetings at an unstated time in Dade County (R. 24); that a James Nimmo, now a resident of New York State, was once a Communist but was no longer associated with the Party (R. 25); that "information indicates" that one Abe Sorkin was a member of the Party and at one

time was a member of the N.A.A.C.P. (R. 25); that one Charles Marks was a member of the Party (R. 25); that "according to information in hand" Myron Marks was a member of the Party (R. 25); that deposit slips showed that Leo Sheiner, a member of the Communist Party, was a contributor to the N.A.A.C.P. (R. 26);<sup>1</sup> that Charles Smolikoff, a former Dade County resident, was a Communist (R. 26); that Tess Kantor, a one-time resident of Miami, was a Communist (R. 26); that Leah Adler Benomovsky, a former resident of Dade County, was a Communist (R. 27); that Louis Popp had once been a member but was no longer believed to be associated with the Party (R. 27); that Emanuel "Manny" Graff and Bobby Graff, once residents of Miami, were members of the Communist Party (R. 27); that Michael Santzek was a member of the Party (R. 27); and that "it is my information" that each of the persons named had been a member or participated in meetings and affairs of the N.A.A.C.P. Then he read a list of 33 persons and stated that some were members of the Communist Party, and that each in the recent past had been active in Communist-front organizations in Dade County (R. 28). Strickland then gave the names of five persons whom he identified as "present and/or past" members of the Communist Party (R. 29).

He was then asked to read the legend on the cards of members of the Communist Party describing their rights and duties (R. 29). As read, paragraphs 3 and 4 pledge each member to fight all forms of "discrimination and segregation, and all ideological influences and practices of 'racial' theories . . ." and to "fight for the full social, political and economical equality of the Negro people, for Negro and white unity" (R. 30).

<sup>1</sup>These deposit slips were never produced either at the committee hearings on November 4, 5, 1959, and July 27, 1960, or at the court hearings on May 30, 1960, and August 30, 1960.

Petitioner's testimony followed. He stated that he was custodian of the membership records of the Miami Branch of the N.A.A.C.P., but that he had not brought those records with him (R. 31); that there were approximately 1,000 members in the Miami Branch (R. 33). He informed the committee that the membership records in his possession were kept for and covered the current year only (R. 31); that membership in the organization was for a 12-month period from the date of joining (R. 32); that at the end of the 12-month period, a person was no longer a member of the N.A.A.C.P., and unless his membership was renewed, his card was removed from the files. (R. 32). He testified that he had been President of the Miami Branch and active in the N.A.A.C.P. for the past five years (R. 40).

Petitioner advised the committee that the N.A.A.C.P., beginning with its annual convention in 1950, and each year thereafter, had adopted resolutions condemning Communism and excluding from the organization all Communists and members of other subversive organizations. Copies of these resolutions were left with the committee (R. 35).

Petitioner volunteered to cooperate with the committee, by agreeing to answer any questions out of his own personal knowledge concerning membership in the N.A.A.C.P. of any person identified by the committee as subversive, but flatly refused to bring or produce the N.A.A.C.P. membership records at the committee hearings for the purpose of answering any such inquiries (R. 45). Petitioner based this refusal on the grounds that to produce the N.A.A.C.P. membership records at the committee hearings, and to testify from these records would create the same fears, concerns and deterrents to the exercise of rights of freedom of association by members and prospective members of the N.A.A.C.P., which would result from the membership records being physically turned over to the committee (R. 37).



He was asked about 14 people previously identified as members of the Communist Party by Strickland (R. 24-28). He was given the names and shown photographs of these individuals. In each instance petitioner stated that he was unable to identify the person named as associated with the N.A.A.C.P. (R. 39-44). Then he was asked whether he would bring the N.A.A.C.P. membership records to authenticate his testimony concerning membership in the N.A.A.C.P. of the 33 persons described by Strickland as either members of the Communist Party or active in Communist-front organizations. This petitioner refused to do (R. 45). He reiterated his offer to say, if asked, whether he knew these persons to be members of the N.A.A.C.P., but refused to bring the N.A.A.C.P. membership records to the committee hearing for the purpose of such testimony. Shortly thereafter the hearings adjourned.

When the hearings resumed the next day, November 5, the first witness called was Arlington Sands. He stated that he was a member of the N.A.A.C.P., but did not know whether his membership had expired (R. 64). He had been active in the organization prior to 1949, and had been a member off and on for the past ten years (R. 64). He had not been to an N.A.A.C.P. meeting in two years (R. 65). He was then asked about the 14 identified as members of the Communist Party by Strickland. He recognized Santzek (R. 65) and Leah Benomovsky (R. 66), but did not recall seeing them at N.A.A.C.P. meetings. He did not remember Myron Marks as a member of the N.A.A.C.P. (R. 67), and had never seen Marks' father at an N.A.A.C.P. meeting (R. 67). He stated that he did not believe that Charles Smolikoff had been an N.A.A.C.P. member because the latter had not thought very highly of the organization (R. 68). Sands asserted that Leo Sheiner had represented the N.A.A.C.P. as an attorney during the period when he had been an official of the Branch, but he did not believe that Sheiner was a Communist (R. 70). He saw



Abe Sorkin at N.A.A.C.P. meetings, but did not know whether he was a member (R. 70). He saw James Nimmo at N.A.A.C.P. meetings (R. 70), but never saw Ed Waller at any (R. 71). He denied having ever told Strickland on the prior Wednesday that he had seen Augusta Birnberg (R. 72), Ed Waller (R. 72), Charles Smolikoff, Leah Benomovsky, Myron Marks (R. 73), or Mike Santzek (R. 73) at N.A.A.C.P. meetings. He did see Leo Sheiner there because he came to an N.A.A.C.P. meeting at Sands' invitation (R. 72).

Strickland was recalled and testified that he had talked to Sands in Miami and that the latter had identified the 14 people in question as members of the Communist Party and of the N.A.A.C.P. (R. 74-75).

Vernell Albury (R. 76-86), Ruth Perry (R. 86-98), and G. E. Grayes (R. 98-103), Treasurer, Secretary and Counsel, respectively, of the Miami Branch, were shown photographs of the 14 alleged Communists. They uniformly denied knowing these people as members of the N.A.A.C.P. although in rare instances one or two of them had been seen at N.A.A.C.P. meetings.

Petitioner was then recalled. He explained that a thorough investigation is made of all prospective Branch officers to make certain that no person connected with any subversive group becomes an officer of the organization. He pointed out that no such investigation of each individual member is possible. If, however, it comes to the attention of Branch officials that an individual member is engaged in subversive activities, action is commenced to terminate his membership in the N.A.A.C.P. (R. 105). There had been no expulsions from the Branch during the past five years because of subversive activities (R. 105).

#### **The Court Proceedings**

On the basis of petitioner's refusal to produce the N.A.A.C.P. membership records at the committee hearings,

Q. All right, sir." (R.23-29)

Arlington J. Sands' testimony appears in the Record, pages 64 through 73. This witness is a life-long resident of Miami, Florida. (R.64) He though his membership in the Miami Branch of the N.A.A.C.P. was current and in good standing, but was sure of the year previous. (R.64) His membership in N.A.A.C.P. went back about ten years. (R.64) He was an ex-vice president of the Miami Branch of N.A.A.C.P. (R.65) This witness recognized photographs of the following identified members of the Communist Party in Dade County:

1. Michael Shantzek (R.65)
2. Leah Benomovsky (R.66)
3. Myron Marks (R.67)
4. Charlie Smolikoff (R.67)
5. Leo Sheiner (R.69)
6. Abe Sorkin (R.70)
7. James Nimmo (R.70)
8. Ed Waller (R.71)
9. Augusta Birnberg (R.72)

Smolikoff, identified by Strickland as a man who used the alias of Charles Doraine, Charles Small, Charles Stevens and Charles Boraine and who had carried Communist Card No. 64511, and who was a top organizer in the unions of Dade County, Florida. (R.26) told the witness, Sands, that they (Communist Party) " \* \* \* didn't have no organization here, and they needed an organization of that sort, the FDR Club, and that's

why he was trying to organize one." (R.68) This witness stated Smolikoff probably was the founder of the FDR Club and discussed it with him before it was founded. (R.68) This witness had seen every established member of the Communist Party, whose photograph he identified at various meetings in Dade County. He knew Leo Sheiner attended the meetings of the N.A.A.C.P. (R.69) He thought he had seen Abe Sorokin and James Nimmo at N.A.A.C.P. meetings. (R.70) He could not specifically recall whether he had seen the others at N.A.A.C.P. meetings, or whether he had seen them at other types of meetings.

As shown on Page 13 of Petitioner's Brief, some of the fourteen Communists whose pictures were exhibited to the witnesses Albury, Perry and Graves, were seen occasionally at N.A.A.C.P. meetings.

In addition to the fourteen Communists whose photographs were exhibited to the witnesses, Mr. Strickland identified thirty-three other people who were, up to the very recent past, either members of the Communist Party itself or active participants in the Communist Party front organizations in Miami, Dade County, Florida. (R.28) In addition, he identified five others as Communist Party members by their card numbers. (R.29) The following questions and answers, while petitioner Gibson was on the stand, appear on Pages 44 and 45 of the Record:

"Q. Now, the names, of course, of people that I just called off to you, sometimes you recognize the name, sometimes you don't?

A. That's true.

Q. Sometimes you associate a face with a name; sometime you don't?

A. (The witness nodded affirmatively)

Q. I have here in front of me, Reverend, a list of thirty- (fol.88) three people who, the information in the Committee's files and previous testimony show have recently been members, either of the Communist Party or actively affiliated with some one or more Communist front organizations in Dade County; and I want to know whether or not—I don't have photographs of these people that I can show you; I want to know whether or not you will, or whether you will refuse to bring your membership lists here for the purpose of comparing them with these thirty-some-odd names that I have here before me, which you might identify some or you might not, off of your membership list, whereas you might not recognize the name?

Will you do that or will you not?

A. Counsel, our position is that if you call those names, and I know those people, I will acknowledge, honestly and truthfully, but so far as identifying those people on the basis of our membership lists, sir, I must respectfully say that we will not bring it, we will not do that." (R.44,45)

In addition to all of the above, the petitioner Gibson testified that each year since 1950, the N.A.A.C.P. in national convention had passed a resolution concerning Communists. (R.34) He gave copies of the resolution to the Committee and asked that they be made a part of the record. (R.35) The resolution reads as follows:

### "Anti-Communism"

"Whereas, certain branches of the National Association for the Advancement of Colored People are being rocked by internal conflicts between groups who follow the Communist line and those who do

*not*, which threaten to destroy the confidence of the public in the Association and which will inevitably result in its eventual disruption; and

(fol.228) Whereas, *it is apparent* from numerous attacks by Communists in their official organs 'The Daily Worker' and 'Political Affairs' upon officials of the Association *that there is a well-organized, nationwide conspiracy by Communists either to capture or split and wreck the NAACP; therefore be it*

Resolved, that this *Forty-First Convention* of the National Association for the Advancement of Colored People go on record as unequivocally condemning attacks by Communists and their fellow-travelers upon the Association and its officials, and in order to safeguard the good-name of the Association, promote and develop unity, eliminate internal ideological friction, increase the membership and build the necessary power effectively to wage the fight for civil rights, *herewith, call upon, direct and instruct the National Board of Directors to appoint a committee to investigate and study the ideological composition and trends of the membership and leadership of the local units with a view to determining causes of the aforementioned conflicts, confusion and loss of membership; be it further*

Resolved, that this Convention go on record as *directing and instructing the Board of Directors to take the necessary action to eradicate such infiltration, and if necessary to suspend and reorganize, or lift the charter and expel any unit, which, in the judgment of the Board of Directors, upon a basis of the findings of the aforementioned investigation and study of local units comes under Communist or other political control and combination."*  
(R.119,120, emphasis supplied)

The above resolution is sufficient standing alone to establish the necessary nexus between the N.A.A.C.P. on the one hand and Communist activities on the other, to form the foundation, on a showing of probable cause, which justifies the interference with any associational freedom which might be involved in this investigation. Certainly the resolution taken in connection with the facts above set out in the record are more than amply sufficient to establish this necessary nexus. The resolution constitutes a ringing indictment of the N.A.A.C.P. and it must be assumed that the association in solemn convention assembled would not continue to put such a resolution upon its public record if the factual allegations concerning infiltration of the association by Communists were not true.

The inescapable conclusion is that these facts make the *ratio decidendi* of the *Barenblatt*, *Braden*, *Wilkinson* and *Uphaus* cases, *supra*, applicable to and controlling of the case at bar. It requires no argument to demonstrate that if the facts in the case are sufficient to set the rationale of those decisions in action, they require the affirmance of the petitioner's conviction. Indeed, the petitioner admits as much on Pages 16 and 17 of his Brief.

The Circuit Court of Leon County and the Supreme Court of Florida in the case of *Theodore R. Gibson v. Florida Legislative Investigation Committee*, 126 So. 2nd, 129 speaking on the record in the case at bar, specifically found that the facts above recited were sufficient to bring the instant cause within the ambit of the *Barenblatt* case.



### Petitioner's Position No. 4

Finally, the petitioner contends that the Florida Legislative Investigation Committee is motivated by improper impulses to expose for the mere sake of exposure and to punish and destroy the N.A.A.C.P. In this connection, the petitioner's Brief contains several unsupported and untrue attacks upon the motives of the Committee. Not only are these attacks untrue, they are unsupported by the record. Three glaring examples of the above are as follows:

"The record conclusively demonstrates petitioner submits that the only real basis for the Committee's investigation of the N.A.A.C.P. and its efforts to link it with subversion is the fact that the Committee is opposed to the organization's advocacy of desegregation and seeks to use state power to impair the N.A.A.C.P.'s effectiveness \* \* \*" (Petitioner's Brief, Page 24)

"Respondent is attempting to use a valid legislative mandate, viz., authority to investigate organizations advocating violence or violation of the laws, to curb N.A.A.C.P. activities by posing a threat of exposure of the organization's members, and of publicly tainting the organization as being Communist dominated. \* \* \*" (Petitioner's Brief, Page 25)

"Here the committee is in disagreement with the Association's use of the courts and other lawful means to promote desegregation. It attempts to use its legislative mandate to coerce the giving up of the right to associational privacy of members of the N.A.A.C.P. The damage which will result, in terms of the deterrent effect upon the exercise of personal liberty by members and prospective members is amply demonstrated by this record." (Petitioner's Brief, Page 26)

In his effort to demonstrate that the Committee is seeking simply to destroy N.A.A.C.P., petitioner improperly represents to the Court that no remedial legislation dealing with the problem of Communist infiltration into the organizations operating in the field of race relations resulted from the Committee's investigation in either the 1957 or 1959 session. (Petitioner's Brief, Page 8) He entirely omits to inform the Court that he and his association have effectively stymied the completion of the investigation since 1957 with a studied and deliberate course of definance and obstruction to the Committee and resort to a series of unnecessary appellate proceedings.

It neither adds to nor detracts from the merits of the case, nor the legal issues before the Court, but it is just as proper for the respondent to point out that it and its predecessor committees, referred to in the record, investigated John Casper, Klu Klux Klan and the Seaboard White Citizens Counsel, as it is for the petitioner to pretend that the sole aim of the Committee has been the destruction of the N.A.A.C.P.

The motives of the members of the Committee cannot vitiate the investigation even if it be assumed that the petitioner is right in regard to his opinion of the reason for the investigation. See *Barenblatt v. United States*, 360 U. S. 109, 3 L.Ed. 1115, 79 S. Ct. 1081. In *Barenblatt*, this Court said:

"\* \* \* Nor can we accept the further contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because the true objective of the Committee and of the Congress was purely 'exposure'. So long as Congress acts in pursuance of its constitutional

power, the judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power \* \* \*

To like effect, see *Watkins v. United States*, 354 U.S. 178, *Wilkinson v. United States*, 365 U.S. 399 and *Braden v. United States*, 365 U.S. 431.

In the case of *Theodore R. Gibson v. Florida Legislative Investigating Committee*, 108 So.2d 729, Text 737-740, the Supreme Court of Florida points out the valid power of the legislature of Florida to conduct this investigation.

In the last analysis, the petitioner is seeking to have this Court throw up a constitutional sanctuary from inquiry into matters which are otherwise within the constitutional legislative domain, merely because the inquiry is made of someone engaged in racial relations as an associational group. In an analogous situation, this Court in the *Barenblatt* case, *supra*, declined to erect such a barrier of constitutional sanctuary around educational institutions. See *Barenblatt* where in this Court said:

"\* \* \* But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls."

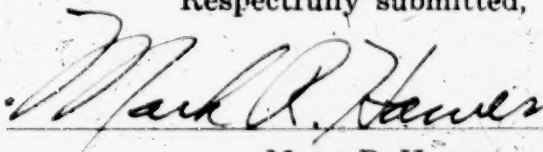
## CONCLUSION

The parties to this cause are in substantial agreement on the law. Basically, this case hinges entirely on the question of whether the evidence before the Committee is sufficient to show probable cause or nexus between the N.A.A.C.P. Miami Branch, and Communist activities. If it is the rationale of the decisions of this Court in *Barenblatt*, *Braden*, *Wilkinson* and *Uphaus*, *supra*, are controlling and the petitioner's conviction must be affirmed. If it is not the rationale of the decisions of this Court, in *N.A.A.C.P. v. Alabama*, 357 U.S. 499, and *Bates v. Little Rock*, 361 U.S. 516, and similar cases are controlling, petitioner's conviction should be reversed.

The record shows that some members of the N.A.A.C.P. do not attend its meetings. Petitioner admits he may not recollect some names of members relying upon his memory alone. Recourse to the records by the petitioner himself to verify his answer, furnishes to the state the bare minimum cooperation it needs to conduct its investigation. At the same time, this procedure grants the maximum protection to N.A.A.C.P. and its members. All members who are not shown to have engaged in subversive activities remain anonymous.

In fine, the sole question is whether or not the trial court had sufficient evidence before it, which, if believed, was sufficient to show the necessary nexus. We submit that the evidence was amply sufficient and that the time-honored rule that appellate courts are bound by findings of fact, made by the trier of fact, when the evidence is sufficient to support those findings, should be applied in this case with the result that petitioner's conviction should stand affirmed.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mark R. Hawes", written over a horizontal line.

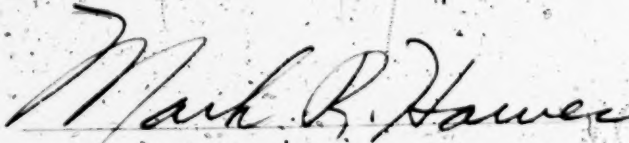
MARK R. HAWES,

500 First Avenue, North,  
St. Petersburg, Florida,  
Attorney for Respondent.

ERLE B. ASKEW,  
of Counsel.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Brief of Respondent has been furnished to Mr. Robert L. Carter, 20 West 40th Street, New York 18, N. Y. and to Mr. G. E. Graves, Jr., 802 N.W. 2nd Avenue, Miami, Florida, Attorneys for Petitioner, by mail this 28th day of October, 1961.

A handwritten signature in cursive script, reading "Mark R. Hawes", written in dark ink.

MARK R. HAWES

500 First Avenue North

St. Petersburg, Florida

*Attorney for Respondent*



SUPREME COURT, U. S.

Office-Supreme Court, U.S.

FILED

SEP 28 1962

JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

October Term, 1962

No. 6

THEODORE GIBSON,

*Petitioner,*

vs.

FLORIDA LEGISLATIVE INVESTIGATION  
COMMITTEE.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA

## APPENDIX TO PETITIONER'S BRIEF ON REARGUMENT

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IN THE  
**Supreme Court of the United States**

**October Term, 1962**

**No. 6**

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**THEODORE GIBSON,**

*Petitioner,*

**v.**

**FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE**

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF FLORIDA

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REARGUMENT**

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**Statement**

In the original argument in this cause, respondent placed emphasis on the wording of the anti-Communist resolution adopted by petitioner's organization as national policy at its 1950 Annual Convention.<sup>a</sup> While the organization had always been opposed to Communism, the 1950 resolution was its first formal policy statement specifically barring Communists from membership. At each Annual Convention thereafter this anti-Communist policy has been reaffirmed.

On November 4, 1959, petitioner furnished the Committee with copies of the texts of each of the anti-Communist resolutions adopted at each N.A.A.C.P. Convention from 1950 (R. 35). Lest the Court be of the mistaken view that the text of the 1950 resolution was the text of the organiza-

tion's policy statement each year thereafter, petitioner appends the text of each anti-Communist resolution adopted at the Annual Conventions of the N.A.A.C.P. beginning with its 1950 Convention.

Respectfully submitted,

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## **Resolutions on Communism Adopted at the Annual Conventions of the National Association for the Advancement of Colored People 1950-1962**

41ST ANNUAL CONVENTION, BOSTON, MASSACHUSETTS—  
JUNE 23, 1950

WHEREAS, certain branches of the National Association for the Advancement of Colored People are being rocked by internal conflicts between groups who follow the Communist line and those who do not, which threaten to destroy the confidence of the public in the Association and which will inevitably result in its eventual disruption; and

WHEREAS, it is apparent from numerous attacks by Communists in their official organs "The Daily Worker" and "Political Affairs" upon officials of the Association that there is a well-organized, nation-wide conspiracy by Communists either to capture or split and wreck the NAACP; therefore be it

RESOLVED, that this Forty-First Convention of the National Association for the Advancement of Colored People go on record as unequivocally condemning attacks by Communists and their fellow-travelers upon the Association, and its officials, and in order to safeguard the good-name of the Association, promote and develop unity, eliminate internal ideological friction, increase the membership and build the necessary power effectively to wage the fight for civil rights, herewith, call upon, direct and instruct the National Board of Directors to appoint a committee to investigate and study the ideological composition and trends of the membership and leadership of the local branches with a view to determining causes of the aforementioned conflicts, confusion and loss of membership; be it further

RESOLVED, that this Convention go on record as directing and instructing the Board of Directors to take the necessary action to eradicate such infiltration, and if necessary to suspend and reorganize, or lift the charter and expel any branch, which, in the judgment of the Board of Directors, upon a basis of the findings of the aforementioned investigation and study of local branches comes under Communist or other political control and domination.

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42ND ANNUAL CONVENTION, ATLANTA, GEORGIA—  
JUNE 30, 1951

WHEREAS, the 41st Annual Conference in Boston adopted a resolution calling attention to internal conflicts in some branches caused by groups which follow the Communist line, and condemning attacks on the Association and its leaders by Communists and their fellow travelers; and instructed the Board to take steps to stop Communist infiltration or control of our branches, and

WHEREAS, the cardinal principle of those who follow the Communist line is to support whatever happens to be at the moment the foreign policy of Russia, a totalitarian dictatorship, while the cardinal principle of the NAACP is to support and strengthen American democracy by winning complete equal rights for all people regardless of race, and

WHEREAS, the Board of Directors, in an attempt to carry out this purpose adopted an amendment to our constitution restricting membership to those who support the principles and program of the NAACP, and

WHEREAS, these principles include opposition to Communist infiltration and control,

BE IT RESOLVED, that we call the attention of the branches to this action of the Board in carrying out the anti-Communist resolution; and

BE IT FURTHER RESOLVED, that we advise the branches that any person excluded from the branch for not being in accord with our policies and principles has a right of appeal to the Board, and that mere criticism of the local or national officials of the NAACP is not alone and of itself ground for exclusion or rejection.

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43RD ANNUAL CONVENTION, OKLAHOMA CITY, OKLAHOMA—  
JUNE 28, 1952

We reaffirm the Anti-Communist resolution adopted at the 1950 Boston Convention supported by an amendment to our Constitution by the National Board restricting membership to those who support the principles and program of the National Association for the Advancement of Colored People, which was strengthened and clarified by the convention in Atlanta, Georgia, in 1951.

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44TH ANNUAL CONVENTION, ST. LOUIS, MISSOURI—  
JUNE 23, 1953

We, as believers in the democratic system, reaffirm our rejection of communism as an anti-democratic way of life and again call upon our branches to be constantly on the alert for attempts of communists and their sympathizers or supporters of any other totalitarian system to infiltrate and gain control of any units of our organization.



**45TH ANNUAL CONVENTION, DALLAS, TEXAS—  
JUNE 29, 1954**

We, as believers in the democratic system, reaffirm our rejection of Communism as an anti-democratic way of life and again call upon our branches to be constantly on the alert for attempts of Communists and their sympathizers or supporters, or supporters of any other totalitarian system, to infiltrate and gain control of any units of our organization.

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**46TH ANNUAL CONVENTION, ATLANTIC CITY, NEW JERSEY—  
JUNE 25, 1955**

We firmly believe that the ills of democracy and the unfinished business of democracy can and will be cured by more democracy, not less. Accordingly, we reaffirm our rejection of Communism as an anti-democratic way of life and form of government. We again call on our branches to be constantly alert against attempts of Communists and their sympathizers and supporters, or the supporters of any other form of totalitarianism, to infiltrate and gain control of any units of our organization.

47TH ANNUAL CONVENTION, SAN FRANCISCO, CALIFORNIA—  
JUNE 26, 1956

In common with the rest of the free world, the National Association for the Advancement of Colored People rejects the program and aims of Soviet Russia and of the International Communist movement. The cause of the National Association for the Advancement of Colored People is a sacred one, vital not only to the future of sixteen million Negro Citizens, but also to the well-beings of all Americans and to the achievement of a democratic American society. The members and the leaders of the National Association for the Advancement of Colored People must zealously protect the Association and all of its units from Communists, and their sympathizers, who attempt to exploit the just grievances and legitimate aspirations of the American Negro in the interests of Russian imperialism.

As in the past, the Association will employ every reasonable measure in keeping with democratic organizational principles to prevent the endorsers, the supporters and defenders of the Communist conspiracy from joining or participating in any way in the work of the NAACP.

The new "line" of the Communist parties throughout the world, and especially in the United States, is by infiltration to insinuate their programs on non-Communist and even anti-Communist organizations. We know that the Communist leadership in America has directed its representatives to seek to involve NAACP units in a "united front" program. This we absolutely reject.

The leaders and the members of the Association must be even more vigilant now than ever before in preventing Communist infiltration, because Communists today operate under many disguises and false fronts.

In accordance with the Boston convention resolution of 1950, the official policy of the National Association for the

Advancement of Colored People continues to be that no branch or state conference, youth or college chapter, will endorse, support or participate in or cooperate in any way with Communist organizations, Communist controlled organizations, and/or persons who are prominently identified with the Ku Klux Klan, White Citizens Councils, Fascists, Communist-front or Communist-line organizations, or groups known to be dominated by Communist leadership and policy, and that Communists are ineligible for membership in the NAACP.

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48TH ANNUAL CONVENTION, DETROIT, MICHIGAN—  
JUNE 25, 1957

In common with the rest of the free world, the National Association for the Advancement of Colored People rejects the program and aims of Soviet Russia and of the International Communist movement, including the Communist Party of the United States. The cause of the National Association for the Advancement of Colored People is a sacred one, vital not only to the future of sixteen million Negro citizens, but also to the well-being of all Americans and to the achievement of a democratic American society. The members and the leaders of the National Association for the Advancement of Colored People must zealously protect the Association and all of its units from Communists, and their sympathizers, who attempt to exploit the just grievances and legitimate aspirations of the American Negro in the interests of Russian imperialism.

The new "line" of the Communist parties throughout the world, and especially in the United States, is by infiltration to insinuate their programs on non-Communist and even anti-Communist organizations. We know that the Communist leadership in America has directed its rep-

representatives to seek to involve NAACP units in a "united front" program.

As in the past, the Association will employ every reasonable measure in keeping with democratic organizational principles to prevent the endorsers, the supporters and defenders of the Communist conspiracy from joining or participating in any way in the work of the NAACP. The leaders and the members of the Association must be even more vigilant now than ever before in preventing Communist infiltration, because Communists today operate under many disguises and false fronts.

In accordance with the Boston convention resolution of 1950, the official policy of the National Association for the Advancement of Colored People continues to be that no branch or state conference, no area or regional conference, no youth or college chapter, will endorse, support or participate in or cooperate in any way with Communist organizations, Communist-controlled organizations, and or persons who are prominently identified with the Ku Klux Klan, White Citizens Councils, Fascists, Communist-front or Communist-line organizations, or groups known to be dominated by Communist leadership and policy; and that Communists are ineligible for membership in the NAACP.

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49TH ANNUAL CONVENTION, CLEVELAND, OHIO—  
JULY 12, 1958

In accordance with the Boston convention resolution of 1950 and as repeated every year since then, it continues to be the official policy of the National Association for the Advancement of Colored People that no branch or state conference, no area or regional conference, no youth council or college chapter, shall endorse, support, participate in,

or in any way cooperate with, Communist organizations, Communist-controlled, Communist-front, Communist-line or Fascist organizations, groups known to be dominated by Communist leadership and policy, and/or persons who are prominently identified with the Ku Klux Klan, the White Citizens Councils and similar organizations; and that Communists, Fascists, and members of the Ku Klux Klan, the White Citizens Councils or similar organizations are ineligible for membership in the National Association for the Advancement of Colored People.

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50TH ANNUAL CONVENTION, NEW YORK, NEW YORK—  
JULY 17-18, 1959

In accordance with the Boston convention resolution of 1950 and as repeated every year since then, it continues to be the official policy of the National Association for the Advancement of Colored People that no branch or state conference, no area or regional conference, no youth council or college chapter, shall endorse, support, participate in, or in any way cooperate with Communist organizations, Communist-controlled, Communist-front, Communist-line or Fascist organizations, groups known to be dominated by Communist leadership and policy, and/or persons who are prominently identified with the Ku Klux Klan, the White Citizens Councils and similar organizations; and that Communists, Fascists, and members of the Ku Klux Klan, the White Citizens Council or similar organizations are ineligible for membership in the National Association for the Advancement of Colored People.

51ST ANNUAL CONVENTION, ST. PAUL, MINNESOTA—  
JUNE 21, 1960

In accordance with the Boston convention resolution of 1950, and as repeated every year since then, it continues to be the official policy of the National Association for the Advancement of Colored People that no branch or other subordinate body of our organization, shall endorse, support, participate in, or in any way cooperate with Communist organizations; Communist controlled, Communist-front, Communist-line or Fascist organizations, groups known to be dominated by Communist leadership and policy, including Communist-controlled unions and or persons who are identified with the Ku Klux Klan, the White Citizens Councils and similar organizations; and that Communists, Fascists, and members of the Ku Klux Klan, the White Citizens Council or similar organizations are ineligible for membership in the National Association for the Advancement of Colored People.

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52ND ANNUAL CONVENTION, PHILADELPHIA, PENNSYLVANIA—  
JULY 15, 1961

In accordance with the Boston convention resolution of 1950, and as repeated every year since then, it continues to be the official policy of the National Association for the Advancement of Colored People that no branch or other subordinate body of our organization, shall endorse, support, participate in, or in any way cooperate with Communist organizations, Communist-controlled, Communist-front, Communist-line or Fascist organizations, groups known to be dominated by Communist leadership and policy, including Communist-controlled unions and/or persons who are identified with the Ku Klux Klan, the White Citizens



Councils and similar organizations; and that Communists, Fascists, and members of the Ku Klux Klan, the White Citizens Councils or similar organizations are ineligible for membership in the National Association for the Advancement of Colored People.

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53RD ANNUAL CONVENTION, ATLANTA, GEORGIA—  
JULY 2, 1962

In accordance with the Boston convention resolution of 1950, and as repeated every year since then, it continues to be the official policy of the National Association for the Advancement of Colored People that no branch or other subordinate body of our organization, shall endorse, support, participate in, or in any way cooperate with Communist organizations, with Communist-controlled, Communist-front, Communist-line or Fascist organizations, or with groups known to be dominated by Communist leadership and policy, including Communist-controlled unions and/or with persons who are identified with the Ku Klux Klan, the White Citizens Council and similar organizations; and that Communists, Fascists, and members of the Ku Klux Klan, the White Citizens Council or similar organizations are ineligible for membership in the National Association for the Advancement of Colored People.